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To
The Honorable
Bainbridge Colby.
With the regards and
esteem of
Lewis Nixon
26 November.
1937.

THE CANAL TOLLS AND AMERICAN SHIPPING

BY
LEWIS NIXON

NEW YORK
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1914

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FOREWORD

It is proposed in this book to submit to an impartial examination the different interpretations of the meaning of the Hay-Pauncefote Treaty. Lest the writer's long association with American shipping interests may seem to militate against a detachment from personal bias in this discussion, he deems it wise to add that he is no longer engaged in shipbuilding, nor has he any interest direct or indirect in any vessel engaged in the foreign or coasting trade of the United States.

Finding many arguments advanced upon ideas gathered from hasty consideration which had not taken in both sides of the question, it was decided to try to put within these brief limits a general analysis of the Treaty's provisions, to review both sides of the controversy and to give furthermore all the state papers that show the development of the Treaty.

If the reading of this book adds to the general information of the ordinary reader without time for exhaustive study and enables him to criticise with confidence the many addresses and papers on the subject I shall feel that it has served the purpose of its inspiration.

Foreword

There seems to be an impression that the contention respecting the right of the United States to remit toll charges on its own vessels is an academic question, and that such contention is simply a battle of wits. As a fact it is the most serious determination that has been asked of our people for half a century.

Our foreign trade is in the hands of our commercial rivals and if the Panama Canal policy is not determined aright it will remain there with ever strengthening control.

Some of our people upon hearsay, others upon blind acceptance of the opinions of others, owing to the fact that treaties were not available, have developed a state of mind in which an insistence upon secure, moral and legal rights is viewed as a breach of treaty faith.

LEWIS NIXON.

New York,
7 April, 1914.

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THE CANAL TOLLS AND AMERICAN SHIPPING

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CHAPTER I

PRELIMINARY STEPS

Even Columbus hoped to discover a strait between the North and South American Continents. The question of cutting through the Isthmus we find referred to many times from 1502 to recent years.

In 1826 Secretary of State, Henry Clay, wrote to Messrs. Anderson and Sergeant, United States delegates to the Panama Congress, advising the consideration by that Congress of the matter of a canal.

In 1835 the Senate adopted a resolution requesting the President to consider the expediency of opening negotiations with the governments of other nations, especially with those of Central America and New Grenada, with a view to safeguarding individuals or companies that might undertake to build a canal across the Isthmus. In 1839 the House of Representatives took action along similar lines in response to a memorial from New York merchants.

On February 10, 1847, President Polk transmitted with message to the Senate for ratification "A general treaty of peace, amity, navigation and commerce between the United States and the Republic of New Grenada," concluded at Bogotá, December 12, 1846. Under this treaty of 1846, the citizens, vessels and merchandise of the United States were to have reciprocal treatment with those of New Grenada in passage across any part of Panama, besides being relieved from any import duties on goods in transit. This in return for the positive and efficacious guarantee of the neutrality of the Isthmus—as well as the rights of sovereignty and property over it.

The Panama Railway completed in 1855 was an outcome of this treaty.

The American and Atlantic Ship Canal Company executed a contract with the Government of Nicaragua August 27, 1849.

Mr. Squier, United States Chargé d'affaires, concluded a treaty ceding Tigre Island in the Gulf of Fonseca to the United States. On October 16, 1849, the British Diplomatic representative to Guatemala, Mr. Chatfield, with an armed force took possession of Tigre Island. Possession at that time would have meant war with Great Britain. We were in the midst of the bitter discussions leading up to our Civil War and had we gone to war with Great Britain very probably the Civil War would have been precipitated with the Southern States as possible allies of Great

Britain. The conversion of English lumber camps on the eastern coast of Nicaragua and Honduras into what was practically British territory, through virtue of occupation in anticipation of the building of a canal, was considered by American statesmen of the period as equivalent to a virtual abandonment of the Monroe Doctrine.

In 1848, England seized and occupied Greytown till 1860 under the mask of aiding the Mosquito Indians, even crowning an Indian King as a "cousin" and "great and good friend" of European sovereigns. The salary of the king was £1000 a year till he died in 1864. Just so long as England considered it necessary she maintained the protectorate over the Mosquito Reservation, getting the Austrian Emperor to bolster up her claims in 1880, and it was not till 1894 that the Mosquito Coast was turned over to Nicaragua and until work under Menocal on the Nicaragua Canal, which was carried on in 1891 and 1892, was abandoned.

So our Government was driven to execute a treaty which violated the intent of the Monroe Doctrine. Just as one of the results of the Russo-Turkish War was to give England control of Cyprus, with the right to occupy territory near the Canal in British interests, and in Central America, though agreeing not to fortify or settle, (in Article I of the Clayton-Bulwer Treaty) we find her holding fast to the Mosquito Coast until 1894 and to Belize to the present day. While

Great Britain engaged by treaty to vacate the coast she violated this treaty in letter and spirit. President Pierce, in a message in 1856, said:

It is with surprise and regret that the United States learned that a military expedition under the authority of the British Government had landed at San Juan del Norte, in the State of Nicaragua, and taken forcible possession of that port, *the necessary terminus* of any canal across the Isthmus within the territories of Nicaragua. It did not diminish to us the unwelcomeness of this act on the part of Great Britain to find that she assumed to justify it on the ground of an alleged protectorship of a small and obscure band of uncivilized Indians whose proper name had even been lost to history, who did not constitute a State capable of territorial sovereignty either in fact or in right, and all political interests in whom and in the territory they occupied Great Britain had previously renounced by successive treaties with Spain when Spain was sovereign to the country and subsequently with independent Spanish America.

The following proclamation is another violation of treaty rights.

Office of the Colonial Secretary.

BELIRE, July 17, 1852.

This is to give notice that Her Most Gracious Majesty the Queen has been pleased to constitute and make the Island of Roatan, Bonacca, Utilla, Barbarat, Helene and Morat to be a Colony to be known and designated as the Colony of the Bay Islands.

AUGUSTUS FREDERICK GARE,
Acting Colonial Secretary.

Roatan was one of the "islands adjacent" to the American Continent that had been restored by Great Britain to Spain under treaties of 1783 and 1786.

Mr. Marcy, Secretary of State, informed the United States Minister to Great Britain, July 26, 1856, as to the view taken by the United States saying:

> Great Britain had not at the time of the Convention of April 19, 1850, any rightful possessions in Central America, save only the usufructuary settlement at Belire, if that really be in Central America, and at the same time if she had any she was bound by the express tenor and true construction of the convention, to evacuate the same and thus to stand on precisely the same footing in that respect as the United States.

The Dallas Clarendon Treaty of 1854, stating explicitly that the protectorate over the Mosquito Indians and continued possession of the Bay Islands would be terminated, was refused by Great Britain.

At any rate it is known that there was much misunderstanding preceding 1850 and alarm over acts of British aggression. Mr. Lawrence, our Minister in London, making but little progress owing to the evasive policy of Great Britain, Mr. Clayton, Secretary of State, signed a convention in Washington directly with Sir Henry Bulwer. This treaty was ratified July 5, 1850, and is known as the Clayton-Bulwer Convention. While Great

Britain made sure of land near to and commanding the entrance of any Nicaraguan Canal, there can be no question but the English statesmen of the day fully appreciated the strength of the New Grenada Treaty of 1846.

The wording of the eighth article of the Clayton-Bulwer Convention, the extension by treaty stipulation of protection, was to secure certain like terms of treatment over other routes. So from 1850 to 1901 we find every form of diplomatic strategy exerted to extend such treaty stipulations and so enjoy equal terms with the United States.

The Treaty of 1846 gave reciprocal rights to the United States and before the provisions of the Clayton-Bulwer Convention could be extended to the Isthmus of Panama very material modifications must have been made in the Treaty of 1846 and this could not be done without the consent of New Grenada.

In fact the Treaty of 1846 with New Grenada stood in the way of the equal treatment guaranteed in the superseded Clayton-Bulwer Treaty, as it extended certain privileges in Panama to the United States by virtue of our giving reciprocal conditions of treatment in Panama itself. It is an accepted principle in international law that favored nation treaties do not preclude the extending of a special privilege to another nation provided a reciprocal privilege is secured in return. Thus the United States negotiated a commercial treaty with the Sandwich Islands in 1876, pro-

viding for certain reciprocal trade concessions. The British Government made the following comment thereon:

> As the advantages conceded to the United States by the Sandwich Islands are expressly stated to be given in consideration of and as an equivalent for certain reciprocal concessions on the part of the United States, Great Britain cannot, as a matter of right, claim the same advantages for her trade under the strict letter of the Treaty of 1851.

Evidently Senator Root's conclusions are that the Monroe Doctrine was in no sense binding upon Great Britain, and that her seizure of lands, in direct opposition to that doctrine, gave her a "coign of vantage which she herself had for the benefit of her great North American Empire for the control of the Canal across the Isthmus."

England promised nothing in the Clayton-Bulwer Treaty that she was not barred from holding by the Monroe Doctrine, and she gave up nothing, even after promising, and the coign of advantage thus embraced includes a claim over Panama, in the opinion of Senator Root. For when asked whether the Treaty of 1846 did not influence the possible extension of the Clayton-Bulwer Convention to Panama, he took a position which seems contrary to the provisions and precedents of public law and in direct repudiation of the clearly expressed attitude of successive administrations of the United States, Mr. Root says:

The whole Isthmus was impressed by the same obligations which were impressed upon the Nicaragua route, and whatever rights we had under our Treaty of 1846 with New Grenada were thenceforth bound to exercise, with due regard and subordination to the provisions of the Clayton-Bulwer Treaty.

Every precedent and practice of international law seems in conflict with such a stand.

Dr. Oppenheim says:

Such obligation as is inconsistent with obligations from treaties previously concluded by one State with another cannot be the object of a treaty with a third State.

In case the arbitration so vigorously urged by Senator Root should find for Great Britain, should we refuse to accept such finding in order to keep our faith under the Panama Treaty or abrogate the Panama Treaty in order to submit to the finding?

At all events Great Britain's adroit efforts to obtain a contract right by extending the treaty stipulations contemplated in Article VIII of the Clayton-Bulwer Convention can be noted from 1850 on.

Thus in 1857 Mr. Cass in a letter to Lord Napier in response to a request for a joint agreement said:

It would be inconsistent with the established policy of this country to enter into a joint alliance with other powers as proposed in your lordship's note.

Mr. Evarts in 1880 refused to consent to any agreement with any foreign power to participate in the special rights already enjoyed by us in Panama.

Mr. Blaine in 1881 said in a message to Mr. Lowell:

> In the judgment of the President this guarantee (of neutrality on the Isthmus) does not require reënforcement or accession or assent from any other power.

In President Arthur's message of December 6, 1881, we find that he said that the prior guarantee of neutrality of the Isthmus of Panama was indispensable and that the interjection of any foreign guarantee might be regarded as a superfluous and unfriendly act. He even went so far as to say that Great Britain might claim a share in such guarantee through some wording of the Clayton-Bulwer Convention and recommended the abrogation of any clause that might possibly be so construed.

Mr. Blaine refused to agree to an arbitration of the boundary between Costa Rica and Panama by a European sovereign saying that any question affecting the territorial limits of Panama was of direct practical concern to the United States. Mr. Bayard accepted the findings later but required that the scope and effect should be defined without impairment of any rights of the third parties, not sharing in the arbitration.

Mr. Gresham in 1893 made clear the position of

the United States that our approval of an arbitrated boundary in no way made the United States a party to the litigation.

Mr. Bayard in 1886 spoke of the "serious concern the United States could but feel were a European power to resort to force against a sister republic of this hemisphere as to the sovereign and uninterrupted use of a part of whose territory we are the guarantees under the solemn faith of a treaty."

We, during all this time, acted quickly to put down disorder or revolution, interfering with the use of the railway across the Isthmus.

Thus Mr. Gresham cabled in 1895:

> If for any reason Colombia fails to keep transit open and free, as that Government is bound by Treaty of 1846 to do, United States are authorized by same treaty to afford protection.

While many such cases can be cited they all simply tend to the same end.

We have shown:

1. That under the Treaty of 1846 the United States enjoyed certain special reciprocal rights with New Grenada over the Isthmus of Panama.

2. That there was a full realization of the danger of permitting any European power to enter into the enjoyment of similar privileges by any form of treaty stipulation permitting a participation in our contract rights.

CHAPTER II

THE CLAYTON-BULWER CONVENTION

The Convention signed April 19, 1850, is given in full in the Appendix to this volume.

The Convention was considered to be hurtful to the spirit of the Monroe Doctrine.

Secretary of State Olney, in 1896, said:

> In short the true operation and effect of the Clayton-Bulwer Treaty is that, as respects all water and land interoceanic communication across the Isthmus, the United States has expressly bound itself so far to waive the Monroe Doctrine as to admit Great Britain to a joint protectorate.

The Convention as stated in the preamble was "for facilitating and protecting the construction of a ship canal and for other purposes." It was primarily to cover the building of a particular canal starting with the river San Juan de Nicaragua on the Atlantic side.

Article I debars either the United States or Great Britain from acquiring or holding

> any rights or advantages in regard to commerce or navigation through the said Canal which shall not be offered on the same terms to the citizens or subjects of the other.

Even our English friends will admit this Article

superseded as we have acquired rights on the Isthmus that cannot be enjoyed in common with Great Britain in addition to rights already ours under the Treaty of 1846.

Besides in the Hay-Pauncefote Treaty England has assumed no obligation in connection with the use of the Canal.

Article II says that even in the event of war between the two nations their vessels using the Canal shall be exempt from blockade, detention or capture by either belligerent. While our right to use the Panama Canal as an addition to our war power is conceded by Great Britain, the concession is a guarded one and an admission by us that neutrality is the same as equal treatment, would result in a challenge of the right of the United States to have such power.

Article III provides for a joint protection of the parties constructing the Canal, together with their property.

Article IV pledges Great Britain and the United States to use their influence with States having or claiming jurisdiction over the territory through which the Canal passes, to facilitate the construction and to secure free ports at each end.

Article V is of great importance, for in this article Great Britain and the United States engage to jointly protect the Canal and guarantee its neutrality. Both parties, however, reserve the right to withdraw their protection or guarantee upon six months' notice provided the persons or

company undertaking or managing the Canal make discriminations against one or in favor of one over the other.

It will be noted that management clearly covered the regulation of commerce by tolls and otherwise. The penalty arising from discrimination caused simply the withdrawal of protection by the one discriminated against, the neutrality being secured by joint protection or by the protection of one in case that one secured special treatment not accorded to the other.

So we find the neutrality of this particular Canal provided for in Articles II and V.

Article VI provides for inviting the coöperation of other nations by their entering into treaty stipulations with the two principals.

Article VII has to do with the joint treatment of those who supply the money and do the work on the Canal with an expressed preference for the first reliable contractor that no time may be lost.

Now let us see what Article VIII says:

> The Governments of the United States and Great Britain having not only desired, in entering into this Convention, *to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection by treaty stipulations to any other practical communication, whether by canal or railway, across the Isthmus which connects North and South America;* especially to the inter-oceanic communications should the same be practicable, whether by cable or railway which are now proposed to be established by the way of Tehuantepec or Panama.

In granting, however, their joint protection to any such canals or railways, as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on even terms, shall also be open on like terms to the citizens and subjects of every other state which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

Senator Root has several times hearkened back to Article VIII of the Clayton-Bulwer Convention for an argument to support his contention that we must treat the vessels of war and commerce of Great Britain upon terms of equality with our own vessels under all circumstances.

The entire Clayton-Bulwer Convention speaks of equal treatment owing to the fact that equal obligations were undertaken in affording protection and in guaranteeing neutrality.

By Articles II and V of the Clayton-Bulwer Convention the two Governments provided jointly for the building of a *particular* canal, its protection and its neutrality, the latter being secured by joint protection. But in Article VIII we find two conditions covered separately in the two paragraphs of the article.

The first paragraph establishes as a general principle, to apply to all available routes, the par-

ticular object accomplished by joint protection in earlier articles of the Treaty, this object being the neutralization secured in Articles II and V by joint protection.

The second paragraph provides that if the two countries do extend their contract joint protection by treaty stipulation to other routes, such routes shall be open to the two countries on equal terms and on like terms to other countries willing to join in the protection.

An important fact in this connection already noted is that either party could withdraw the protection by which neutrality and protection was secured by giving six months' notice, in case such equality of treatment was not secured.

As provided by the Clayton-Bulwer Convention, the Canal specified to run through Nicaragua was to be neutralized by the two nations jointly; they were to join in the burdens; they were to join in the protection; and they were to join hand in hand in controlling the Canal and in seeing that all nations did have exactly the same treatment by the Company building this canal through a territory alien to each of them.

This partnership control you will see has been definitely and permanently ended by the last treaty, and this termination, we see from the *pourparlers,* proves beyond question that Great Britain understood this and acted in complete accord with such understanding.

Equality of treatment under Article VIII was

the return for a joint assumption of burden and responsibility, yet the British contention is that since a certain privilege was obtained through joining in protection this privilege must continue even though Great Britain is relieved from this expensive and burdensome responsibility. That is, in absence of explicit yielding to Great Britain, our rights are to be limited or destroyed by implication. But happily the wording of the Hay-Pauncefote Treaty is clear upon this point. Is it "equal treatment" or "neutrality" that is carried over from Article VIII? The preamble to the Articles of the Treaty says: "the objections that may arise from the Clayton-Bulwer Convention to the construction of the Canal are to be removed without impairing the *general principle of 'neutralization* established in Article VIII.' We supersede the Treaty in every other respect."

The preamble to rule I of Article III of the Hay-Pauncefote Treaty says that the United States adopts as the *basis of neutralization* certain rules substantially as embodied in the Suez Canal Treaty. And further light is thrown upon the meaning by the fact that in modifying the Suez rules only such parts as provided for *neutralization* were retained and all references to equal treatment thrown out. We shall examine these rules further on.

But Great Britain, and some American supporters of her protest, says that so long as she is

not permitted to join in protection that neutrality secured by *our* protection becomes the same as *equal treatment* secured by joint protection. It shows the demoralization of the public mind on this question when such preposterous conclusions are taken seriously. I should be the last one to decry British diplomatic capacity, nor do I find anything wrong in their diplomats making the best case possible for their Government. They certainly act upon Madame de Staël's saying that: "The patriotism of nations ought to be selfish." It has long been a favorite expedient of British diplomatist to lay claims long in advance through *pourparlers.* So the ingenious attempts up to the last minute to retain a partnership or contract participation in the Hay-Pauncefote Treaty were to be expected.

The Treaty of Ghent, which some of those not knowing of its provisions are anxious to celebrate, signed fifteen days before the Battle of New Orleans, provided for the restoration of all territory, places and possessions taken by either nation from the other during the war, with certain unimportant exceptions.

But the minutes of the Conference at Ghent kept by Albert Gallatin represent the English Commissioners as declaring in exact words through Mr. Goulburn:

> We do not admit Bonaparte's construction of the law of nations. We cannot accept it in relation to any subject matter before us.

While the American Commissioners did appreciate the meaning, it became known afterwards that the British Ministry did not intend the Treaty of Ghent to apply to the Louisiana Purchase at all. From 1803 to 1815, Pitt, the Duke of Portland, Grenville, Perceval, Lord Liverpool and Castlereagh, denied the right of Napoleon to sell the territory to us.

The words used by Mr. Goulburn were meant to lay the foundation for a claim on the Louisiana Purchase entirely external to the provisions of the Treaty of Ghent. And if Pakenham had not been defeated we should have been deprived of this territory and should have had no canal. Of course no one considers extraneous matter as pertinent except those who cannot gain their ends through the plain terms of a contract.

When the Treaty of 1824 between the United States and Russia was about to be exchanged the Russian Minister informed Secretary of State Adams that he was instructed by his Government to file an explanatory note at the time of the exchange of ratifications, stating the views of his Government as to the meaning and effect of certain articles of the Treaty. Mr. Adams informed him that such a note could have no effect whatever on the Treaty unless it was sent to the Senate with the Treaty and received its approval.

We had a similar prior filing by Sir Henry Bulwer of a statement that the British Government did not understand the engagements of the Clay-

ton-Bulwer Convention to apply to British settlements at Honduras or its dependencies.

Fortunately, though, in the case of the Hay-Pauncefote Treaty the negotiations support all the American contentions as the letters exchanged clear up all points in dispute, and clearly restrict the sphere of operation of the rules to a field in which they affect all persons and vessels alike.

I have already referred to the different paragraphs of Article VIII, but Mr. Hay is so freely quoted in what he might say were he alive that I wish to advance the evidence of his written ideas at the time of the negotiations. In the memorandum prepared by him we find in referring to Article IV of the Hay-Pauncefote Treaty: "It is thought to do entire justice to the reasonable demands of Great Britain in preserving the *general principle of neutralization* and at the same time to relieve the United States of the vague, indefinite, and embarrassing obligations imposed by the eighth article of the Clayton-Bulwer Convention."

And yet, while plainly done away with by Mr. Hay, who in good faith preserves the general principle of neutrality, we find Senator Root in his Senate Speech endeavoring to revive these same vague, indefinite and embarrassing obligations of Article VIII.

The Suez Canal had been neutralized in 1888 by certain rules and under the first Hay-Pauncefote Treaty certain rules were adopted to secure the

free navigation of the Canal that were in many respects like those of the Suez and it was said these rules were to preserve and maintain the general principle of neutralization of Article VIII of the Clayton-Bulwer Convention, not the latter part of Article VIII as Sir Edward Grey labors to prove by a process of elimination, which eliminates the general principle of neutrality altogether and substitutes for it equal rights.

No one can deny that neutrality was secured by joint protection in the Clayton-Bulwer pact, just as was equal treatment. We were willing to carry on the neutrality of the Canal and it is definitely pledged and the rules by which we shall permit its neutral use are clearly set forth in rules given in Article III the protection being given by us alone.

Surely if we had been desirous of giving equal treatment as well it would have been so stated. It is certainly not implied but on the contrary is definitely refused as we shall see when we trace the origin of the rules.

Do not assume for an instant that we could not have built a canal without Great Britain's permission. This all too general assumption confesses a loyal subserviency abhorrent to Americans—at least to the far greater part of them. The Clayton-Bulwer Convention had been violated by Great Britain, but we were not goaded to abrogate it even though justified.

Sir Edward Grey says that if we had built the

Canal under the Clayton-Bulwer Treaty we must have given English vessels equal treatment with our own, and then conveniently forgets that the Hay-Pauncefote Treaty superseded the Clayton-Bulwer Convention. But we are not building under the Clayton-Bulwer bargain.

President Pierce in a message of 1856 said:

> It was with surprise and regret that the United States learned that a military expedition under the authority of the British Government had landed at San Juan del Norte in the State of Nicaragua and taken forcible possession of that port, the necessary terminus of any canal or railway across the Isthmus within the territories of Nicaragua.
>
> It did not diminish to us the unwelcomeness of this act on the part of Great Britain to find that she assumed to justify it on the ground of an alleged protectorship of a small and obscure band of uncivilized Indians, whose proper name had even been lost to history, who did not constitute a state capable of territorial sovereignty either in fact or in right, and all political interest in whom and in the territory they occupied Great Britain had previously renounced by successive treaties with Spain when Spain was sovereign to the country and subsequently with independent Spanish America.

The Fifty-first Congress took up this subject very fully.

The Committee on Foreign Relations of the Senate presented to the Fifty-first Congress a report containing a review of the history of the Clayton-Bulwer Treaty and it reported to the

Senate its conclusion that it had become obsolete and that

> The United States is at present under no obligation, measured either by the terms of the Convention, the principles of public law or good morals, to refrain from promoting in any way it may deem best for its own interests the construction of this Canal, without regard to anything contained in the Convention of 1850.

To this report are appended the names of every member of the Committee among them two who have held the office of Secretary of State, Messrs. Evarts and Sherman.

The United States Government had to obtain the necessary powers from Congress to build the Canal, and it could not ask Congress to use the money of the United States in a project controlled in any way by a foreign nation.

Abrogation would however have left both parties freedom of action in Central America, if we abandoned the Monroe Doctrine. The Monroe Doctrine already barred Great Britain from doing what she agreed not to do in the Clayton-Bulwer Treaty and the first Hay-Pauncefote Treaty was considered, as was the Clayton-Bulwer Treaty, in violation of the Monroe Doctrine and as unduly limiting the power of the United States and was *denounced by the Democratic Party* in its ~~Denver~~ Kansas City Platform. The Clayton-Bulwer Treaty was really a convention covering an uncertain contingency as to time and place, leav-

ing to joint action the preparation of rules of management and control.

The Clayton-Bulwer Convention is superseded. We have traced the bearings of facts up to the time of such abrogation.

It is plain to be seen that if the joint protection by which neutrality and equal treatment could be secured in this convention should be extended by treaty stipulation that grounds for claiming equal participation would be laid. Since 1850 we had been resisting adroit efforts to obtain such joint contract extension.

Yet with a persistency and statecraft to be admired we find the first treaty submitted in the Hay-Pauncefote negotiations embodying a surrender of this principle on our part and as fast as beaten on one demand another was presented.

Happily for us the influence of a firm and consistent traditional policy exerted for over fifty years prevented such surrender.

CHAPTER III

NEUTRALITY AND EQUAL TREATMENT AND THE SUEZ RULES

We find that by the preamble to the Hay-Pauncefote Treaty its object is

> To remove any objection which may arise out of the Convention of 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the United States, without impairing the general principle of neutralization, established in Article VIII of that Convention.

The American people very clearly were determined that a participation by other nations in a canal built by us would not be permitted. Some of our statesmen strongly recommended the abrogation of the Clayton-Bulwer Convention and we had ample reasons for doing so, the Treaty having been violated in letter and spirit. This would doubtless have given rise to bad feeling as firm assertion of American rights for some reason seems unpopular with a part of our people. Unquestionably the new treaty was executed to "save the face" of Great Britain for otherwise it must have been abrogated.

So in order not to impair the general principle

of neutralization we adopt certain rules in Article III of the Hay-Pauncefote Treaty as a basis for such neutralization.

It is stated that these rules are substantially as embodied in the Convention of Constantinople, for the free navigation of the Suez Canal. Much light will be thrown upon the controversy over the meaning of the Treaty by an examination of this convention which is given in the Appendix. For what is omitted is just as important as what is retained in clearing up the intention of the rules.

The British contention is that under the rules as appearing in the Hay-Pauncefote Treaty, they are entitled to equal treatment because in a former treaty equal treatment was secured by joint protection and joint protection being done away with equal treatment must result. The wording of the protest given in full in the Appendix is so ingenuous that it must be given:

> It certainly was not the intention of His Majesty's Government that any responsibility for the protection of the Canal should attach to them in the future. Neutralization must, therefore, refer to the system of equal rights.

In other words a certain privilege gained through joining in protection must remain although we relieve Great Britain from this expensive and burdensome responsibility.

Senator Root says that the Panama Canal is to be made "*neutral upon the same terms as were specified in the Clayton-Bulwer agreement.*" Sir

Edward Grey by a strange coincidence makes the same misstatement in his protest.

Read the Hay-Pauncefote Treaty. It abrogates the Clayton-Bulwer Convention, preserving only the general principle of neutrality, and this neutrality is to be secured by elaborate and stated rules based upon rules adopted thirty-eight years after the Clayton-Bulwer Treaty, and even these Suez rules of 1888 were radically changed that the United States might fortify the Canal and might have and enjoy all the rights incident to construction, as well as the exclusive right of providing for the regulation and management of the Canal.

England in 1882 seized Egypt and when secure in possession in 1888, in compliance with Great Britain's proposition for a national conference of the Powers, a treaty of seventeen articles was drawn up between the following: Great Britain, Austro-Hungary, France, Germany, Holland. Italy, Spain, Russia and Turkey, we find Great Britain became a party, with the reservation that the terms of such treaty should not be brought into operation in so far as they would not be compatible with the *transitory* and *exceptional* condition in which Egypt was put for the *time being* in consequence of her occupation by British forces, and in so far as they might fetter the liberty of action of the British Government during such occupation (See Martens, 2d ser. Page 557).

Not only has there been a desire to keep alive the abrogated Clayton-Bulwer Treaty, but since

the Treaty of Constantinople was drawn upon in shaping the rules of neutrality there is an attempt to read into rules adopted by us in Article III for securing neutrality the various obligations of the Suez rules whether found in our rules or not. In revising the rules in order to adapt them to the intentions of the negotiators every feature not applying to the neutrality which they engaged to offer was stricken out.

Thus from Article I was taken out: "*The Canal shall always be open in time of peace as in time of war regardless of flag.*" The rules do not guarantee at all time and for all powers the free use of the Canal, nor forbid the keeping of men of war in or near the Canal, nor provide that the Canal must remain open in time of war. In fact the changes made from the Suez Canal rules clearly put the United States in a class apart in all such respects.

Since the rules as adopted are designed to embody the conditions under which we agree to uphold the neutrality of the Canal, let us seek the definitions of neutrality as given in Dr. Oppenheim's International Law. He says:

> Neutrality may be defined as the attitude of impartiality toward belligerents, adopted by *third* states and recognized by belligerents, such attitude creating rights and duties between the impartial states and the belligerents.

No one but ourselves is permitted to maintain

the neutrality of the Canal; we do not agree to be neutral toward an enemy, hence we hold the Canal neutral as to other powers. Again quoting from Dr. Oppenheim:

> Since neutrality is an attitude of impartiality it excludes such assistance and succor to one of the belligerents as is detrimental to the other, and further such injuries to one as benefit to the other.

Reading Rule 1 of Article III covers such contingencies of impartial treatment in that we treat the vessels of commerce and of war of all nations alike not simply as regards charges and conditions of traffic but in all other ways in which we might aid or succor one or injure the other.

How closely we follow in our rules the Oppenheim doctrines is shown by again quoting him:

> Neutrals must prevent belligerents from making use of their neutral territory and of their resources for military and naval purposes during the war.

A hurried résumé of the rules shows that vessels of war of a belligerent must not embark or disembark troops, munitions of war, or warlike materials, that the Canal must never be blockaded, that vessels of war of a belligerent shall not remain within three miles of either end, and that a vessel of war of a belligerent shall not depart within 24 hours from the departure of a vessel of war.

In fact it will be found that every contingency connected with belligerent operations is covered

by our rules but that having adopted such rules to preserve the neutrality of the Canal they are not capable of being construed nor stretched to cover conditions having to do with *ordinary commerce unaffected by belligerent operations.*

We have the support of Dr. Oppenheim in this; following him further in defining and explaining neutrality we find:

> Neutrality is a condition during a condition of war only.
>
> Rights and duties deriving from neutrality do not exist before the outbreak of war.

Hence in applying rules to conserve the neutrality of the Canal such rules if directly applying to accepted understanding of neutral obligations could not be extended to cover the ordinary conditions and far more extended existence of peaceful commerce except by specific provisions or by implication from the fact that no articles in the treaty granted further powers.

Now, Lord Lansdowne did attempt to make these rules apply to ordinary commerce when he suggested August 3d, 1901, an amendment that the neutrality rules should "govern all inter-oceanic communications across the Isthmus."

This will be referred to later as it shows clearly a request for the adaptation of the rules to the peaceful commerce using the Canal and the studied refusal of the United States to grant such request.

The action of the Senate is very enlightening upon this point as it struck out the expression "in time of war as in time of peace," but retained the linking together of vessels of war and peace, so that rules applying to one must apply to the other.

But the changes from the rule prove even more.

There is an idea prevalent that the rules for neutrality are not applicable in their entirety to neutral obligations, and that Rule 1 is inconsistent unless applied to peaceful commerce. Let us examine them as briefly as possible.

The intention is to make sure that we shall not play favorites in time of war by extending any special privileges or treatment to one belligerent as against another, either by hindering or delaying his vessels of war or by interfering with his vessels of commerce. Hostile operations might be hampered, even by unjust or inequitable charges exacted in such a way that under particular circumstances such charges might bear more heavily on one belligerent than another. So we agree not to discriminate as between nations in respect of the conditions or charges of traffic or otherwise—not simply tolls but any rules affecting passage through the Canal in the interest of one belligerent as against another. In fact the British interpretation would prevent us at any time favoring even vessels belonging to our Government in the way of docking facilities, coaling arrangements, use of repair shops, signal stations,

anchorage grounds, wharf and watering facilities, or otherwise.

But say the English partisans, Great Britain will not insist upon this. If we admit her right to insist, as we do, when we strip from Article III its bearing upon the neutral operation of the Canal, she can object and doubtless would. Each time an insurmountable objection which invalidates her claims is brought we find partisans eager to waive it.

The equality of treatment covered in the rules is equality of treatment of belligerents meted out under the rules we have adopted to secure the neutralization of the Canal. We can only be neutral as between others; we cannot be neutral in case we are ourselves a belligerent.

While this was admitted by Lord Lansdowne we find Sir Edward Grey, realizing that such prior admission was damaging to their case, endeavoring to extend us certain special rights for our man-of-war on the score that we now have sovereign rights in the Canal Zone. This is a dangerous concession, for if we are in a class apart with our man-of-war we are, of course, in a class apart with our merchant vessels, and changes, in vital respects, brought about by changed relations of principals, render the entire treaty voidable.

Since Dr. Oppenheim states in his recent booklet that we have no such rights, a quotation from Sir Edward Grey's protest will be of interest. The protest says:

Now that the United States has become the practical sovereign of the Canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection.

Since successful contention that "all nations" of Rule 1 includes the United States is manifestly impossible, the United States is of course in a class apart. While this was conceded February 22, 1901, by Lord Lansdowne and by Sir Edward Grey in the late protest by the British Government, we find a labored argument in a recent booklet by Dr. Oppenheim, which taking as an axiom the fact that the United States is not in a class apart, proves to his satisfaction that we too are prevented from using the Canal to our advantage in time of war. As his premise is wrong his conclusion cannot hold and in view of the fact that what he contends for is already conceded by the British Government his inferences may be ignored. While wrong as to his premises however, he is too well versed in international law to attempt to give a strained and impossible definition to "neutrality." He says:

There ought, however, to be no doubt that the United States is as much bound to obey the rules of Article III of the Hay-Pauncefote Treaty as Great Britain or any other foreign State. These rules are intended to invest the Canal with the character of neutrality. If the United States were not bound to obey them, the Canal would lose its neutral character, and, in case she were a belligerent her opponent would be justified in con-

sidering the Canal, a part of the region of war and could, therefore, make it the theater of war.

Great Britain contended during the negotiations that while other nations if our enemy were free to violate the neutrality of the Canal in time of war in which we were engaged, she as a party to the Treaty could not. Lord Lansdowne said, August 3, 1901:

> I understand that by the omission of all reference to the matter of defense the United States Government desires to reserve the power of taking measures to protect the Canal, at any time when the United States may be at war, from destruction or damage at the hands of enemy or enemies.

Mr. Hay clearly states his sense of our rights and they are in accord with Lord Lansdowne's when he states that the omission of the words "in time of peace as in time of war" is that this "would give to the United States the clear right to close the Canal against another belligerent and to protect and defend itself by whatever means might be necessary." And that this omission dispensed with necessity of the Davis amendment.

Is not this a clear intimation to Great Britain that our ships are not to be treated upon terms of equality with the vessels of other powers?

Now, Lord Lansdowne did attempt to make these rules apply to ordinary commerce when he suggested August 3d, 1901, an amendment that the neutrality rules should "govern all inter-

oceanic communications across the Isthmus." This was stricken out as explained elsewhere. But we have in force an article covering all communications not affected by the obligations and duties of neutrality. Let us read this strong, virile and unambiguous Article II, which says:

It is agreed that the Canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present treaty, the said Government shall have and enjoy all rights incident to construction, as well as the exclusive right of providing for the regulation and management of the Canal.

We agree in Article III not to use the Canal to advance the fortunes of any particular belligerent by a frank and open adoption of rules of neutrality to be applied by us to the nations of the world as the conditions under which they may use the Canal. If a belligerent should betray the faith we put in him by injuring the Canal for hostile advantage we could debar such nation from further use of the Canal after belligerent operations, or penalize such nation in our discretion.

But outside of such obligations of neutrality we have in Article II full freedom of action. While under our favored nation treaties we shall probably accord in general equal tolls to the vessels of other nations, there is nothing to prevent our mak-

ing reciprocal concessions with other nations. I of course assumed that Senator Root justified on this score his negotiation of the Tripartite Treaty between Panama, Colombia and the United States, extending reciprocal concessions not accorded to all other nations. In similar manner the Hay-Bunau-Varilla Treaty extended special privileges to Panama.

No one will question or deny that the rules of Article III are to be taken together. If the interpretation of one rule as forbidding preference for our own vessels of commerce and war renders the remaining rules absurd we have reasons as old as Euclid's teachings for setting such interpretation aside.

Rule 1 says that the Canal shall be free and open to the vessels of *Commerce* and *War* of all nations observing these rules upon terms of entire equality. Now they construe this to mean that we are prevented from preferring our own vessels of commerce.

But if it applies to vessels of *Commerce* it must in exact terms apply to vessels of *War*.

In other words, under any unquibbled construction of this section we cannot exclude vessels of war and include vessels of commerce under our flag unless we are in a class apart, as of course we are.

Please read Sections 1, 2, 3, 4, 5 and 6, for they must be read together to clear up this question.

All, I believe, will admit that the constitutional

authority to build this canal existed in the war power of the United States. Two Presidents have confirmed this view in their statements that this canal is an addition to our war power as it admits of quicker transfer of our naval forces from one ocean to another.

Yet advocates of the British contention take the stand that we are forbidden to discriminate in favor of our own vessels of commerce, and as vessels of war and commerce are linked together, to be consistent they must argue that we cannot discriminate in favor of our own vessels of war.

Hence they must take the position that if during war with a foreign power we find an enemy's man-of-war in the Canal, we cannot drive it out and if it leaves such waters we must wait twenty-four hours before giving chase. And since under Article II we are given the "Exclusive right of providing for the regulation and management of the Canal," if engaged in war our ships finding themselves in the Canal must chase themselves out. Can we reach any other logical sequence of their stand? Need its absurdity be pointed out?

The rules in their entirety are simply a means of defining the conditions under which we shall hold the Canal neutral. There has been so much international misrepresentation that this fact has not been grasped except by those who have given this subject exhaustive study.

The usefulness of these rules in respect to neutral treatment and how they are apart from tolls

and regulations connected with the commercial use of the Canal is not usually understood on account of the insincerity of those who attempt to uphold the British contention by ignoring the object to be attained by the rules as well as the clear provisions of Article II of the Treaty.

I heard an eminent authority make the statement a few days ago that if Mr. Hay were alive he would say that the toll exemption clause was in violation of the Treaty. Unfortunately Mr. Hay is not here but he is on record in correspondence connected with the negotiations of the Treaty in which he says: "Upon due consideration of these suggestions, and at the same time to put all the powers on the same footing, viz.: that they could use the Canal only by complying with the *rules of neutrality* adopted and prescribed, an amendment to Lord Lansdowne's amendment was proposed and agreed upon."

This amendment according to Mr. Hay secured the following:

> Thus the whole idea of contract right in the *other* powers is eliminated and the vessels of any nation which shall refuse or fail to observe the rules adopted and prescribed may be deprived of the use of the Canal.

Here we find in Mr. Hay's own written words a full appreciation of the fact that these are rules of neutrality and that they are binding upon the vessels of *other* nations.

This reduced to simple phrasing is that we

only ask other nations to obey our rules of neutrality and we pledge ourselves that in war in which we are not engaged this strait shall be held free and neutral by us to even the war vessels of belligerents, they being required to continue on their good behavior when they pass from the high seas to waters under our control, management, protection and ownership.

Let us see whether the statement that the British Government considers these rules as being formulated for the commercial control of the Canal; Lord Lansdowne under date of August 3, 1901, wrote: "It would appear to follow that the whole responsibility for upholding these rules and thereby maintaining the *neutrality* of the Canal would henceforward be assumed by the Government of the United States.

In the same communication he says:

> While indifferent as to the form in which the point is met, I must emphatically repeat the objections of his Majesty's Government to being bound by stringent rules of neutral conduct not equally binding upon *other* powers. I would therefore suggest the insertion in Rule 1 after "all nations" of the words "which shall agree to observe these rules." This addition will impose upon *other* powers the same self-denying ordinance as Great Britain is desired to accept, and will be an additional security for the neutralization of the Canal, which it will be the duty of the United States to maintain.

We know this effort to obtain a contract right in canal management was defeated, but no one

can logically contend that this does not show a clear appreciation and acceptance of the fact that these rules are for the purpose of defining our understanding of our neutral obligations.

Of course, as the final treaty is worded, we find in the words of Mr. Hay:

> That no other power had now any right in the premises or anything to give up or part with as a consideration for acquiring such a contract right.

Certainly no one will say that "all nations" as used in the above quotation from Lord Lansdowne's communication includes the United States.

Following the use of the word "nations" and comparing Rule 1 of the second and final treaties given above, no open-minded man will deny the fullest British endorsement of the fact that "nations" as therein used refers to all other nations except the United States. The only conclusion is that instead of asking all nations to agree to observe these rules as a precedent to the use of the Canal by the vessels of such nations, we adopt the rules and require all nations to observe them, and under circumstances so clearly evidenced by the *pourparlers* the United States could not be one of "all nations" therein referred to.

This is why well informed English diplomats leave to American sympathizers the task of influencing the American public mind by the continued assertion that "all nations" includes the United

States when it is only necessary to follow the evolution of the phrase through successive treaties to know that it does not.

Senator Root, in his various speeches, refers to the views of our past statesmen as indicative of our policy regarding a canal. When these were given everyone contemplated a canal through alien territory whose Governments were weak. If we expected European countries to respect the sovereignty and neutrality of the land of such countries we should set an example ourselves. Conditions, as he very well knows, are entirely changed.

A careful reading of the Suez Convention given in the Appendix will show the care exercised in eliminating every expression carried over to the Hay-Pauncefote Treaty that might extend equal treatment to ordinary peaceful commerce. Just as equal treatment in all the operation of the Canal was covered in the Clayton-Bulwer Convention so equal treatment except for Turkey was covered in the Suez agreement.

Sir Julian Pauncefote took part in the Suez conference—he had before him the rules of Suez when the Hay-Pauncefote Treaty was negotiated—if he were safeguarding equal treatment in peaceful commerce and trying in phrasing the rules to make neutrality signify equal treatment why eliminate every intimation of such treatment and so draw the rules that they covered conduct applying only to belligerents? Of course, this is

ignored, but knowing that Sir Julian Pauncefote was most familiar with the rules, let us quote XII of the Suez Convention in full:

> The High Contracting Parties by application of the *principle of equality* as regards the free use of the Canal, a principle which forms one of the bases of the present treaty, agree that none of them shall endeavor to obtain with respect to the Canal territorial or commercial advantages or privileges, which may be in any international arrangements which may be concluded. Moreover the rights of Turkey as the territorial Power are reserved.

Here was a precedent for the use of the *principle of equality*—instead we find used in the Hay-Pauncefote Treaty *principle of neutralization.*

Why was the term "principle of neutralization" used? It was to place the United States in a class apart—the Canal is not neutralized in the ordinary sense of the term. The United States agrees to hold the Canal neutral as to belligerents in wars in which she is not concerned and reserves all the powers necessary to enforce such neutrality and assumes all the obligation.

Article IX of the Treaty of Vienna which provides for the neutrality of the free town of Cracord says that "no armed force shall be introduced upon any pretense whatever."

In the Treaty of Paris, neutralizing the Black Sea, maintenance of armaments was prohibited. In neutralizing Luxemburg there was a provision

that the City of Luxemburg should no longer be treated as a federal fortress. Article III of the Treaty of London, November 14, 1863, neutralizing the Ionian Islands said: "The fortifications constructed in the Island of Carfu, having no longer any object, shall be demolished." The Berlin Treaty of 1878, referring to the neutralization of the Danube said: "all the fortresses and fortifications existing on the course of the river shall be razed and no new ones erected."

Yet in neutralizing the Panama Canal the prohibition against fortifications is omitted by mutual consent.

In other words there is a distinct departure from the true neutrality of the Clayton-Bulwer Convention which covered a canal not designed for warlike purposes.

But the Suez Canal conditions coming up in the meantime found the nations of Europe having possessions in the East unwilling to concur in negotiating a treaty forbidding passage by the ships of a belligerent, so a more extended use of the term neutralization is used to cover the case of a nation in armed control agreeing to hold its canal neutral as to all other nations.

Under our limited form of Government the Constitutional warrant for constructing the Canal will be found in the exercise of the war power of the United States, the Canal being an addition to such war power.

So we are warranted in the conclusion that if the British contention is to stand we must revise that treaty as follows:—

1. That Article III is not to be read in its entirety but if any rule after the first makes the British interpretation absurd all such sections must be suppressed.

2. That the preamble to Article III must be ignored as it specifically states that these rules are for securing the neutralization of the Canal.

3. That "neutralization" must not receive the definition given it in International Law or the language of diplomacy, as such definition limits its control under such rules to time of war.

4. That all the obligations of the Clayton-Bulwer Treaty must be carried over to the Hay-Pauncefote Treaty, although the former is superseded by the latter.

5. That the negotiators when they substituted the "principle of neutralization" for the "principle of equality" assumed that "neutralization" expressed "equality" more clearly than "equality" itself.

Then we must ignore:—

1. That the Clayton-Bulwer Treaty provided free passage for all vessels during peace and war, forbidding discrimination.

2. That the Convention of Constantinople did the same and forbade fortifications as well, and forbade any attempt to restrict the free use of the

Suez Canal, in peace or war; even Turkey if at war could commit no act of hostility within its waters.

3. That the only thing in common to the Clayton-Bulwer and Hay-Pauncefote pacts is the idea of neutralization.

4. That Great Britain was relieved of the great burden of the joint guarantee of neutrality and that we assumed all burdens of such guarantee as well as construction, defense, management and regulation.

5. That the rules of the Treaty of Constantinople were radically changed and only such parts as provided for neutralization were retained and all references to equal treatment dropped.

6. That from such rules were dropped all ideas of prohibition as to discrimination during time of peace.

CHAPTER IV

THE NEGOTIATION OF THE HAY-PAUNCEFOTE TREATY

On February 5, 1900, Mr. Hay, Secretary of State, and Lord Pauncefote, British Ambassador, signed at Washington a convention, the object of which was declared to be to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans and to that end to remove any objection which may arise out of the Convention of April 19, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the general principle of neutralization established in Article VIII of that convention. This was communicated to the Senate by President McKinley on the same day.

The Senate gave its advice and consent to the Exchange of ratifications with certain radical amendments. The Treaty as sent to the Senate which we shall call No. 1 in referring to it was as follows:—

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ire-

land, Empress of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific oceans, and to that end to remove any objection which may arise out of the Convention of April 19, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed their Plenipotentiaries.

ARTICLE I

It is agreed that the Canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Convention, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the Canal.

ARTICLE II

The High Contracting Parties, desiring to preserve and maintain the "general principle" of neutralization established in Article VIII of the Clayton-Bulwer Convention, adopt, as the basis of such neutralization, the following rules, substantially as embodied in the Convention between Great Britain and certain other Powers, signed at Constantinople, October 29, 1888, for the Free Navigation of the Suez Maritime Canal, that is to say:

1. The Canal shall be free and open, in time of war

as in time of peace, to the vessels of commerce and of war of all nations, on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic, or otherwise.

2. The Canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the Canal except so far as may be strictly necessary; and the transit of such vessels through the Canal shall be effected with the least possible delay, in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war or warlike materials in the Canal except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the Canal, within three marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance and opera-

tion of the Canal shall be deemed to be part thereof, for the purposes of this Convention, and in time of war as in time of peace shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the Canal.

7. No fortifications shall be erected commanding the Canal or the waters adjacent. The United States, however, shall be at liberty to maintain such military police along the Canal as may be necessary to protect it against lawlessness and disorder.

ARTICLE III

The High Contracting Parties will, immediately upon the exchange of the ratifications of this *Convention,* bring it to the notice of the other Powers and invite them to adhere to it.

The Senate amendments inserted in Article II the phrase *"which convention is hereby superseded";* also the insertion of the following at the end of Rule 5 in Article II:

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered one, two, three, four and five of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

Article III was entirely stricken out. This draft as amended was not satisfactory to Great Britain though if it had been accepted much of her present contention would have held. For years

we know that English diplomacy exerted every means to extend the contract stipulation, the joint contract features of the Clayton-Bulwer Convention, and this was accomplished in this first draft. The first Hay-Pauncefote Treaty bound us hand and foot and fastened upon the United States every restriction of the Clayton-Bulwer Treaty. Happily this betrayal of the rights and interests of our country was rejected by a patriotic Senate.

Article VIII of the Clayton-Bulwer Convention says that the two Governments agree to extend their protection by treaty stipulations to any other practical route. So the first Hay-Pauncefote Treaty proposed, while purporting to remove any objection to the building of the Canal which may arise out of the Clayton-Bulwer Convention, was in reality an adroitly worded supplement to that convention. It extended by treaty the stipulated joint protection by which equal treatment was to be secured as outlined in the second paragraph of Article VIII. It did not supersede the Clayton-Bulwer Convention. It adopted rules forbidding discrimination under any condition either of peace or war, and made the building of the Canal a partnership affair in which the United States bore all the burdens and, at the same time through the limitations incurred under the rules of Article III, barred the United States from enjoying any of the rights incident to construction.

Of course this first treaty is a very tender sub-

ject with those sympathizing with Great Britain, but the gradual shaping of the betrayal of our country's rights and interests as existing in the first treaty into the final treaty gives us a ready means of finding out the intent of the last treaty as ratified and the *pourparlers* leading to the changes show plainly the acceptance by Great Britain of such changes, not blindly, but with perfect understanding of their purport.

Mr. Hay communicated the amendments made by the Senate to the British Government. That Government expressed its disapproval of the amended treaty and Lord Lansdowne submitted a new draft accepting some of the ideas contended for but still retaining the idea of the extension of contract stipulations and joint protection.

Lord Lansdowne also in his communication of August 3, 1901, showed plainly an acceptance of the difference in the neutral conditions of the Panama Canal as compared with the Clayton-Bulwer Canal. He pointed out that Great Britain's obligation would debar her from "any warlike act in or around the Canal, while the United States would be able to resort to such action even in time of peace to whatever extent they might deem necessary to secure their own safety."

Mr. Hay put the case in this way in his explanation of the attitude of the United States:

1. That there should be in plain and explicit terms an express abrogation of the Clayton-Bulwer Treaty.

2. That the rules of neutrality adopted should not deprive the United States of the right to defend itself and to maintain public order.

3. That other powers should not in any manner be made parties to the treaty by being invited to adhere to it.

Certainly a radical change from the wording of the first treaty.

But the discussion following opened the eyes of Senators to the true bearing of proposed treaty provisions and determined pruning and amendments followed so that the Treaty as finally adopted was absolutely different in intent from the first draft submitted.

What conception of equal treatment could be conjured up to deprive the United States of the right to use the Canal as a part of her war power? This shows very plainly that the neutrality considered was the neutrality always meant by men versed in international law and its meaning and that it was not in any way to be confused with equal rights. Mr. Hay in this connection explains that the omission of the words "in time of war as in time of peace" is that this "would give to the United States the clear right to close the Canal against the other belligerent and to protect and defend itself by whatever means may be necessary." If we are to assume in order to be in accord with British contention, that neutral rights are equal treatment then even the privilege

of using the Canal for our protection is held on sufferance.

Again quoting from Mr. Hay's memorandum:

> In conformity with the Senate's emphatic rejection of Article III of the former treaty, which provided that the High Contracting Parties would immediately upon the exchange of ratifications, bring it to the notice of other powers and invite them to adhere to it, no such provision was inserted in the draft of the new treaty.
>
> It was believed that the declaration that the Canal should be free and open to all nations on terms of entire equality (now that Great Britain was relieved of all responsibility and obligation to enforce and defend its neutrality) would practically meet the force of the objection which had been made by Lord Lansdowne to the Senate's excision of the article inviting the powers to come in, viz., that Great Britain was placed thereby in a worse position than other nations in the case of a *war* with the United States.

In other words the express desire of Great Britain at that time was to secure the same treatment by the United States as all *other* nations in time of war with the United States.

Explaining the omission of the prohibition against fortifications from the new treaty Mr. Hay says:

> The whole theory of the Treaty is that the Canal is to be an entirely American Canal. The enormous cost of construction is to be borne by the United States alone. When constructed it is to be exclusively the property of the United States, and is to be managed, controlled and defended by it. Under these circumstances, and

considering that by the new treaty Great Britain is relieved of all responsibility and burden of maintaining its neutrality and security, it was thought entirely fair to omit the prohibition that "no fortification shall be erected commanding the Canal or the waters adjacent."

And yet we had a few years ago Americans blatantly protesting against fortifications because a rejected treaty forbade them and accusing our Government of breach of faith, as they now do on the toll question.

Again discussing the verbal changes in Section 1 of Article III wherein the British very adroitly labored to be considered as having a contract right in the Canal, Mr. Hay says:

He (the President) believed also that there was a strong national feeling against giving to the other powers anything in the nature of a contract right in an affair so peculiarly American as the Canal; that no other powers had now any right in the premises to give up or part with as consideration for acquiring such contract right; that they are to rely on the good faith of the United States in this treaty; and that it adopts the rules and principles of neutralization there set forth. These rules are adopted in the Treaty with Great Britain as a consideration for getting rid of the Clayton-Bulwer Treaty and the only way in which other nations are bound by them is that they must comply with them if they would use the Canal.

Upon due consideration of these suggestions, and at the same time to put all the powers upon the same footing, viz., that they could use the Canal only by complying with the rules of neutrality adopted and prescribed,

an amendment to Lord Lansdowne's amendment was proposed and agreed upon.

This made the clause:

The Canal shall be free and open to the vessels of commerce and war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation.

Thus the whole idea of contract right in the other powers is eliminated and the vessels of any nation which shall refuse or fail to observe the rules adopted and prescribed may be deprived of the use of the Canal. And please note that the *rules* are to be observed—not one rule.

Lord Lansdowne under date of August 3, 1901, wrote:

It would appear to follow that the whole responsibility for upholding these rules, and thereby maintaining the neutrality of the Canal, would henceforward be assumed by the Government of the United States. The change of form is an important one but in view of the fact that the whole cost of construction of the Canal is to be borne by that Government, which is also to be charged with such measures as may be necessary to protect it against lawlessness and disorder, His Majesty's Government is not likely to object to it.

Sir Edward Grey in his protest seems just to have awakened to this view of his predecessor. Again quoting the same memorandum:

While indifferent as to the form in which the point is met, I must emphatically renew the objections of His Majesty's Government to being bound by stringent rules

of neutral conduct not equally binding upon OTHER powers. I would therefore suggest the insertion in Rule 1, after "all nations" of the words "which shall agree to observe those rules." This addition will impose upon OTHER powers the same self-denying ordinance as Great Britain is desired to accept, and will be an additional security for the neutrality of the Canal, which it will be the duty of the United States to maintain.

These negotiations clearly show the recognition by Great Britain of the United States as the Sovereign owner and sole protector of the Canal and the full concession of our right to provide for its regulation and management and that Great Britain was making sure that she would obtain equal treatment with other powers observing the rules adopted by the United States as the basis for the neutralization of the Canal.

This is the meaning of the "general principle" of neutralization established by Article VIII of the Clayton-Bulwer Treaty.

How can any unprejudiced man say that such principle of neutralization could be impaired by any preference the United States might see fit to extend to its own vessels? Could anyone attempt to say to a body of intelligent men that freeing our own vessels from tolls would in any way disturb the neutralization of the Canal? Can anyone say seriously that under this treaty Great Britain would not have the right to subsidize her vessels using this canal or repay the tolls charged them in passage?

In fact would it not be impertinent interference in the affairs of another nation for this Government to dictate the policy of Great Britain or any other nation with respect to their shipping?

But blinded by sophistry we actually find men who contend that we cannot rebate tolls to our own ships, while they freely extend such rebate privileges to other nations.

As a fact it is not our affair how other nations treat their vessels and after we have discharged our obligations to the world by affording equal tolls and according equal treatment to all other nations, their citizens and subjects that observe the rules the United States has prepared as a precedent to their use in furthering the principle of neutralization, we are free to extend such preference as we like to our vessels in their use of a canal, built, owned and controlled by ourselves alone.

The basis of neutralization adopted by the United States rests on the modified rules of the Convention of Constantinople for the navigation of the Suez Canal. While built by a private corporation the Ottoman Empire exercised sovereignty over it and through such shadowy sovereignty enjoys preference for certain of its vessels. This fact is ignored by Sir Edward Grey, who finding no comfort, hies him back to Clayton-Bulwer.

We know that a number of the signatory powers

directly rebate tolls collected for the passage of their vessels, and most of them do so indirectly. Their right to do so has passed unchallenged, yet my tory friends in this argument confront us with the weird contention that the United States having adopted these rules is barred from doing the very things that other nations, parties to such convention, have done and are doing.

The Russian Government in 1909 appropriated 650,000 roubles in exact terms to pay the tolls of the merchant steamers of the Russian Volunteer Fleet both for tonnage and for all men, women and children carried.

The British P. & O. Company receives in subsidies enough to nearly pay all its canal dues although it operates through the Canal a number of boats apart from mail steamers.

The North German Lloyd receives an annual subsidy on its vessels using the Canal of $1,385,000. Japan pays a subsidy of $1,336,947 to the Nippon Yusen Kaisha for its steamers through the Suez to Europe.

The Massageries Maritimes, the largest French Company using the Suez Canal was paid for its lines to China, Japan, Australia and Madagascar, $2,145,000 in subsidies.

Austria specifically provides by law for payment of Suez tolls on Austrian steamers from Trieste to Bombay, Calcutta and Kobe.

The Swedish Government calculates its subven-

tion to the Svenska Ostasiatiska Kompaniet to represent the amount of tolls paid by the ships of the Company for passing the Suez Canal.

So that the powers who ratified the Convention of Constantinople directly support by their acts our rights under the Hay-Pauncefote Treaty to favor our own shipping, and certainly no one will contend that if we have the right to collect the tolls at Panama and then repay them that we have not the right to remit them in the first instance. As one of the reports of Congress on this question says:

> It is unnecessary to resort to a device or subterfuge in order to do indirectly what we have a right to do directly.

Or to quote President Taft upon this question:

> If there is no "difference in principle between the United States charging tolls to its own shipping, only to refund them, and remitting tolls altogether" as the British protest declares, then the irresistible conclusion is that the United States, although it owns, controls and has paid for the Canal, is restricted by treaty from aiding its own commerce in the way that all the other nations of the World may freely do. If it is correct to assume that there is nothing in the Hay-Pauncefote Treaty preventing Great Britain and the other nations from extending such favors as they may see fit to their shipping using the Canal, and doing it in the way they see fit, and if it is also right to assume that there is nothing in the Treaty that gives the United States any

supervision over, or right to complain of, such action, then the British protest leads to the absurd conclusion that this Government in constructing the Canal, maintaining the Canal and defending the Canal, finds itself shorn of the right to deal with its own commerce in its own way, while all other nations using the Canal in competition with American commerce enjoy that right and power unimpaired.

The British protest is therefore a proposal to read into the Treaty a surrender by the United States of its right to regulate its own commerce in its own way and by its own methods—a right which neither Great Britain herself, nor any other nation that may use the Canal, has surrendered or proposes to surrender.

The surrender of this right is not claimed to be in terms. It is only to be inferred from the fact that the United States has conditionally granted to all the nations the use of the Canal without discrimination by the United States between the grantees; but as the Treaty leaves all nations desiring to use the Canal with full right to deal with their own vessels as they see fit, the United States would only be discriminating against itself if it were to recognize the soundness of the British contention.

We see a very lively appreciation of the fact that extension of joint treaty stipulation is eagerly sought by Great Britain. When the Treaty in form No. 1 was not found acceptable there is just the same persistent attempt to retain such contract participation in later drafts.

Accepting Mr. Hay's ideas in a measure we find

that on August 3, 1901, Lord Lansdowne suggested the following draft as being acceptable to the British Government which we shall call No. 2.

The United States of America and His Majesty, the King of the United Kingdom of Great Britain and Ireland, etc., being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific oceans, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle of neutrality" established in Article VIII of that convention, have for that purpose appointed their plenipotentiaries.

ARTICLE I

The High Contracting Parties agree that the present *treaty* shall supersede the aforementioned convention of the 19th April, 1850.

ARTICLE II

It is agreed that the Canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock and that subject to the provisions of the present *treaty,* the said Government shall have and enjoy all the rights incident to such construc-

tion, as well as the exclusive right of providing for the regulation and management of the Canal.

ARTICLE III

The United States adopts, as the basis of neutralization of said ship canal, the following rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The Canal shall be free and open to the vessels of commerce and of war of all nations *which shall agree to observe these rules,* on terms of entire equality, so that there shall be no discrimination against any nation *so agreeing,* or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. *Such conditions and charges of traffic shall be just and equitable.*

2. The Canal shall never be blockaded, nor shall any right of war be exercised, nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the Canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the Canal except so far as may be strictly necessary; and the transit of such vessels through the Canal shall be effected with the least possible delay in accordance with the regulations in force, and with only such intermission as may result from the necessities of the

service. Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the Canal except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the Canal within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than 24 hours at any one time except in case of distress, and in such cases shall depart as soon as possible, but a vessel of war of one belligerent shall not depart within 24 hours from the departure of a vessel of war of the other belligerent.

6. The plants, establishments, buildings and all works necessary to the construction, maintenance and operation of the Canal shall be deemed to be part thereof for the purposes of this *treaty,* and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the Canal.

ARTICLE III-A

In view of the permanent character of this treaty, whereby the general principle established by Article VIII of the Clayton-Bulwer Conven-

tion is reaffirmed, the high contracting parties hereby declare and *agree that the rules laid down in the last preceding article, shall so far as they may be applicable, govern all interoceanic communications across the Isthmus which connects North and South America, and that no change of territorial sovereignty, or other change of circumstances shall affect such general principle, or the obligations of the high contracting parties under the present treaty.*

It will be noted that the United States now adopts the rules instead of Great Britain and the United States together. What steps shall Great Britain take to secure a contract participation? You will note in Rule 1 of Treaty No. 2 that the Canal is to be held free and open to the vessels of commerce and of war of all nations "*which shall agree to observe those rules.*"

Later we find the suggestion that the two contracting parties shall bring such rules to the attention of other powers and invite their adherence. The invitation and its acceptance would naturally constitute a contract and the claim would very certainly follow. Mr. Hay stated that there would be strong opposition "to inviting other powers to become contract parties to a treaty affecting the Canal." This ingenious attempt was abandoned as soon as it was seen that its purpose was understood. So there was substituted for the words "the Canal shall be free and open to the vessels of commerce and of war of

all nations which shall agree to observe these rules" the words "the Canal shall be free and open to the vessels of commerce and of war of all nations observing these rules," and instead of "any nation so agreeing" the words "any such nation."

Not securing the extension of joint protection upon which to claim equal treatment to what would a negotiator turn in order to secure such treatment.

It will be noted in Article II of the final treaty that we are to have full powers of management and regulation.

The omission of the words "in time of peace as in time of war" confined the application of the rules to neutral conditions. Was there any way to broaden such application and at the same time to attempt again to secure contract joint protection through treaty stipulation? Let us repeat Article III-A, suggested by Lord Lansdowne:

> In view of the permanent character of this treaty, whereby the general principle established by Article VIII of the Clayton-Bulwer Convention is reaffirmed, the *high contracting parties* hereby declare and *agree* that *the rules* laid down in the last preceding article, shall, so far as they may be applicable, *govern all interoceanic communications* across the Isthmus which connects North and South America, and that no change of territorial sovereignty, or other change of circumstances shall affect such general principle or the obligations of the high contracting parties under this present treaty.

Did we accept this? Not at all. Consistent with the firm principle of refusing direct or indirect efforts to secure equal treatment with U. S. vessels or to invalidate Article II vesting in us the enjoyment of the rights incident to construction it was changed to the following appearing as Article IV in the Hay-Pauncefote Treaty:

> It is agreed that no change of territorial sovereignty or the international relations of the country or countries traversed by the before mentioned Canal shall effect the general principle of neutralization or the obligations of the high contracting parties under present treaty.

Lord Lansdowne explains his consent to this change by saying that Mr. Hay contended that the general principle of neutrality was already mentioned in the preamble and that to reiterate the idea in still stronger language and to give Article VIII of the Clayton-Bulwer Convention what seemed a wider application than it originally had would not meet with acceptance by the United States. Mr. Hay never intended that the rules for conserving neutrality should govern all "interoceanic communications" and naturally refused to permit any such idea to find lodgment in the Treaty.

While the phrase is ambiguous, at any rate it was omitted and the application of the rules was confined to the limitations of Article III.

It shows the care of Mr. Hay in limiting the

possibility of double meaning and amplification of the vague indefinite and embarrassing obligations of Article VIII.

Besides this we did not permit Great Britain to succeed in the attempt to adopt the rules jointly with us after refusing it in Article III, wherein the United States adopts the rules alone, as we see the appearance of the High Contracting parties adopting the agreement cut out. Now let us consider the Treaty in its final form. (See Appendix.)

The Literary Digest of December 22, 1900 states:

> The temper of the Senate was first made evident by its adoption of the Davis amendment (passed by a vote of 65 to 17) permitting measures which the United States may find necessary to take for securing, by its own forces, the defense of the United States and the maintenance of public order.
>
> Two other amendments were proposed by Senator Foraker and accepted by the Committee on Foreign Relations, the first declaring that the Clayton-Bulwer Treaty is hereby superseded and the other eliminating Article III, which provided that the other powers should be invited to adhere to the Treaty.

The great wisdom of referring treaties to the Senate is demonstrated by the radical changes made in the Treaty from the form in which it was at first negotiated, signed and submitted to the Senate.

The writer feels that the first treaty in no way

safe-guarded the interests of the United States. A good deal of the general misconception of the real meaning of the Treaty lies in the fact that a number of our public men get their impressions of the Treaty from this earlier form and have not followed its careful redrafting. In 1913 in speaking in answer to Mr. Choate at a Chamber of Commerce meeting the writer said:

> Read standard treatises on International laws of England or any other country and you will find neutrality defined as a condition existing during time of war; that neutral obligations cannot hold until actual war has begun. Therefore if we have rules for conserving the neutrality of the Canal, they are for the purpose of application to those who are belligerent.

Mr. Joseph H. Choate here interrupted the writer's address saying:

"The Treaty says 'in times of peace and war.'"

To which the writer replied:—

> I beg your pardon, Mr. Choate, you are mistaken. The Hay-Pauncefote Treaty says no such thing as these words were stricken from the first Hay-Pauncefote Treaty by the Senate as it whipped that betrayal of American rights into acceptable shape.

Mr. Choate did not follow the subject further but his opinion that the Treaty confers equal rights has spread throughout the country.

Historical facts should not be stated in mincing words.

In 1891, long after Mr. Lowell's communication

had been made, the Senate Committee on Foreign Relations of the 51st Congress took up the investigation of the Clayton-Bulwer Convention and unanimously stated their conviction that we were fully at liberty to proceed in any way we saw fit to promote the construction of an Isthmian Canal. The Committee was made up of such conservative and capable men and was composed: John Sherman, Chairman, George Edmunds, William P. Frye, William Evarts, J. N. Dolph, John T. Morgan, Joseph E. Brown, H. B. Payne, J. B. Eustis.

Conditions were such that the United States could no longer be bound by the Clayton-Bulwer Convention, we were justified in denouncing it by the flagrant violations of Great Britain and there was a growing sentiment favoring its termination. All the precedents and practices confirm our right to have done so. But we were loath to exercise such right. Great Britain really gave up nothing except a right of mere obstruction for all other rights claimed by her as to us were in violation of the Monroe Doctrine and the Clayton-Bulwer Treaty.

I was a delegate to the Kansas City Convention of 1900 and there the Democratic Party Platform denounced the first treaty as follows:

> We condemn the Hay-Pauncefote Treaty as a surrender of American rights and interests not to be tolerated by the American people.

The discussion of the first Hay-Pauncefote Treaty under the mature and capable criticism of the Senate showed how we had simply extended the Clayton-Bulwer Convention's outlawed and violated provisions and validated them.

Senator Foraker referring to this feeling says:

> I happen to know that Mr. Hay was familiar with this situation, and this sentiment and purpose. Doubtless the British Government had the same knowledge. At any rate negotiations were suddenly renewed with the result that on the fourth day of December, 1901, President Roosevelt sent to the Senate what is known as the second Hay-Pauncefote Treaty.

Yet every gain made in the shaping of the first into the final treaty as now existing is lost if we admit that neutrality means equal treatment and that under the Treaty the rules for conserving neutrality must govern all conditions of commerce in peace and war and without regard to belligerency, which is what we refused to do in the Hay-Lansdowne negotiations.

CHAPTER V

INSINCERITIES

THE writer has been criticised for saying that he has not read a single sincere argument in favor of the English contention.

Let us quote from the speech of a well-known statesman in which he says:

> The merest schoolboy can pass upon the question. I am going to read you two clauses and I should like to challenge any member to show how they can possibly be reconciled:
>
> "The Canal shall be free and open to the vessels of commerce and war of all nations on terms of entire equality, so that there shall be no discrimination against any such nation or its citizens or subjects in respect of the conditions or charges of traffic or otherwise."
>
> That is what the Treaty says:
>
> In the Canal Bill the clause is:
>
> "No tolls shall be levied upon vessels engaged in the coastwise trade of the United States."
>
> Can you put these two things together and reconcile them in any possible way? Of course, it is an utter impossibility.

And just such argument is spread broad-cast. Men are not sincere in argument when they take from the body of a treaty a qualified and limited

clause and endeavor to have our people believe that it stands as an unqualified obligation and our people are being misled throughout our country by such misrepresentation. The men who do this know very well the true definition and application of neutrality. They know that if the rules were for securing the neutrality of the Canal that even without definite power given we should have the right to regulate the ordinary peaceful commerce in our own way—yet, they ignore the broad powers given in Article II. This I claim is insincere.

Then we have what is known as the Bard resolution. During the discussion of the Treaty Senator Bard offered the following resolution:—

> The United States reserves the right in the regulation and management of the Canal to discriminate in respect of the charges of traffic in favor of vessels of its own citizens engaged in the coast-wise trade.

Senator Root, and those who base their view of the Treaty upon his speech spread broadcast, said:

> I say, the Senate rejected that amendment upon this report which declared the rule of universal equality without any preference or discrimination in favor of the United States, as being the meaning of the Treaty and the necessary meaning of the Treaty.

Yet, when Senator Root made this statement he knew and his followers know when they pass along his arguments that Senator Bard had said

over his own signature in a letter to Congressman Knowland read upon the floor of the House, that when his amendment was under consideration it was generally conceded by Senators that without his specific amendment the rules of the Treaty did not prevent discrimination and hence the Bard resolution was considered superfluous by his colleagues.

Now let us note that at the same time and by the same vote a resolution providing for fortifications was voted down because it too was considered superfluous. Mr. Hay reflects the very decided opinion of the Senate in refusing to ratify a treaty that forbade fortification.

Senator Lodge who reported the Treaty in the Senate says it does not bar preference for our own vessels. President Roosevelt who promulgated the Treaty says it does not bar such preference. President Taft declares we have full powers to prefer our own vessels.

After the rejection of the first treaty by the Senate, Mr. Hay said that he feared he could not negotiate a treaty that would be confirmed but Senator Foraker told him that a treaty superseding the Clayton-Bulwer Treaty, doing away with all partnership and permitting fortifications would doubtless prove acceptable and a treaty was negotiated along such lines.

Senator Foraker says:

> According to my recollections this very question (of

right to discriminate in favor of our own ships) was raised by an amendment offered to the Treaty which amendment was voted down overwhelmingly because it was thought unnecessary to specify that a provision of such a character did not apply to us who were building the Canal, and were to have with respect to it, the usual rights of ownership and all the rights of regulation.

Who best interprets the intent of the Senate at the time, Senator Foraker who aided in the development of an acceptable treaty, or Senator Root who did not take his seat in that body till years after?

But the evidence is not confined to one man nor a dozen men. A few months ago Senator Towne, who was in the Senate at the time wrote me:

> There is not the slightest doubt in the world that your impression as to the understanding originally prevalent among the members of the Senate in regard to the right of the United States under the Hay-Pauncefote Treaty, to discriminate in favor of its own ships, is correct.

If Senators who have thus testified, and I have quoted men of both parties, who understood the Treaty at the time and who understood as the result of critical study and discussion the essential differences between the second treaty as ratified and the first treaty as submitted for ratification, are not the judges of what they meant, to whom must we apply? Yet Senator Root and others uses this unfair deduction from Senate proceedings in all his speeches and continues to use it after their attention is called to his error.

Am I in error in saying such arguments are insincere?

Similarly we find a favorite argument to be the quoting of Canadian Treaties providing in explicit and definite terms for absolute equality in respect of rules, regulations and tolls upon either American or Canadian vessels in the canal and water system of the Great Lakes. When Canada in contravention of this explicit agreement granted a rebate so as to reduce Canadian charges from twenty cents to two cents the United States objected.

Yet for twenty-one years, in spite of our objections, Canada was supported in her discrimination and it was only after President Cleveland advised retaliatory legislation that the rebates in favor of Canadian vessels were suspended.

But the crowning act of insincerity is that of spreading the idea that we are false to treaty obligations.

The very men who for political advantage give currency to such untruth know that our people are very sensitive to attacks upon the national honor and so appeal to this sentiment for selfish ends.

No nation has suffered more than this for blind adherence to treaties and conventions evaded and violated by others.

Senator Lodge in a speech in the U. S. Senate April 9, 1914, said:

We have scrupulously observed our international agreements and where differences have arisen we have settled them not with the high hand of power but by negotiation and arbitration.

Yet the appeal to our people on this question of tolls wanting logical support is sought to be gained by misrepresenting the sentiment and policy of our people before the world. We shall conserve a decent respect for the opinions of mankind as well by asserting our treaty rights as by standing fast to treaty obligations.

CHAPTER VI

THE SPEECH OF SENATOR ELIHU ROOT[1]

This speech was delivered in the Senate on January 21, 1913. It has been sent to all parts of the country, being printed by the Peace Society and mailed under Government frank.

The high standing and distinguished public service of its author naturally give it great weight and it has been the cause of much misunderstanding upon this important matter.

As to his statement about the exhaustion of the members, and the Treaty being considered by very few members, we must remember that much is done in Committee and that the discussion excited the liveliest interest and the records do not bear out his statements as to meager attendance nor as to vigor in discussion.

As to the pretensions of Great Britain in Central America, history does not endorse the righteousness of her cause so fully as Senator Root and while he quotes very fully what Great Britain engaged not to do in Central America the reader will note very careful omission to state that Great Britain continued to violate the provisions of the Clayton-Bulwer Convention.

[1] This speech is given in the Appendix.

We must remember that in this speech Senator Root endeavors to justify England's claim of equal treatment. As there can be no ground found for such claim in the Hay-Pauncefote Treaty both Senator Root and Sir Edward Grey harken back to the Clayton-Bulwer Convention just as if it were in full force.

Senator Root says that Article VIII is the "explicit agreement for equality of treatment to the citizens of the United States and the citizens of Great Britain in any canal wherever it may be constructed across the Isthmus." He omits to state the equality of treatment is obtained through joint protection extended by treaty stipulation.

We find Senator Root then drawing a parallel as to equality of treatment in American and Canadian Canals. It is true that explicit provisions for equal treatment were contained in the Treaty of 1871. It is true also as stated elsewhere and Senator Root knows it that we did not get such equal treatment, though we constantly demanded it from Great Britain till twenty-one years later when President Cleveland inspired drastic retaliatory legislation to force Great Britain's long and deliberate evasion of a direct and explicit treaty obligation. We search in vain, however, for any of the clear provisions found in the Great Lakes waterways treaties for equal treatment in the Hay-Pauncefote Treaty.

It has been pointed out in another chapter how Senator Root goes counter to all the ideas of pub-

lic law in saying that the provisions of the Treaty of 1846 had to be subordinated to the Clayton-Bulwer Convention. It is just the opposite and the strenuous attempts to obtain participation in such Treaty of 1846 by Great Britain and the steadfast refusal of our statesmen to grant such participation are a part of our country's history.

It is to be regretted that Senator Root draws an entirely misleading conclusion from Secretary Olney's memorandum of 1896. He quotes Secretary Olney as follows:

> If changed conditions now make stipulations which were once deemed advantageous, either inapplicable or injurious, the true remedy is not an ingenious attempt to deny the existence of the Treaty or to explain away its provisions, but in a direct and straightforward application to Great Britain for a reconsideration of the whole matter.

And then Senator Root says:

> We did apply to Great Britain for a reconsideration of the whole matter, and the result of the application was the Hay-Pauncefote Treaty.

Of course, everyone knows that the reconsideration suggested by Mr. Olney was not such as gave rise to the Hay-Pauncefote Treaty the burden of the Olney memorandum being that since we had for many years put up with violation of the Clayton-Bulwer Convention and had not abrogated it the Treaty should be considered as in effect.

President McKinley stated the real needs of

the situation in his message of December 5th, 1898, in which he said:

> That the construction of such a marine highway is now more than ever indispensable to that intimate and ready intercommunication between our eastern and western seaboards demanded by the annexation of the Hawaiian Islands and the prospective extension of our influence and commerce in the Pacific, and that our national policy now more imperatively than ever calls for its CONTROL by this Government, are propositions which I doubt not that Congress will duly appreciate and wisely act upon.

While Senator Root quotes that our Government shall have and enjoy all rights incident to construction, as well as the exclusive right of providing for the regulation and management of the Canal, his advice leads to relinquishment of all rights incident to construction and the limitation of regulation and management to the rules for conserving neutrality and that these rules must apply to ordinary commerce, ignoring entirely Article II.

Then again he says:

> The principle of neutralization provided for by the eighth article is neutralization upon terms of absolute equality both between the United States and Great Britain and between the United States and all other powers.

Here we see an abandonment of the CONTROL considered indispensable by President McKinley

and the doctrine that we cannot use the Canal to our own advantage in time of war in which we are engaged. And these un-American conclusions are advanced to bolster up a weak stand taken on weak premises.

He glides quickly over the fact that there were several drafts submitted omitting to mention that the changes from the first draft and the gradual shaping of the final treaty opened the eyes of the Senate to the fact that the first treaty was a betrayal of our country's interests and a reversal of a policy of refusal to admit others to contract participation heretofore steadfastly maintained by American statesmen.

It is too bad that Senator Root in quoting from Mr. Blaine's instruction to Mr. Lowell, June 24, 1881, did not include that the Treaty of 1846 did not require

> reënforcements or accession or assent from any power.

and that any attempt to supersede by an agreement of European powers would

> partake of the nature of an alliance against the United States and would be regarded by this Government as an indication of unfriendly feeling.

These ideas were not to be considered as a new policy since they were "nothing more than the pronounced adherence of the United States to principles long since enunciated by the highest authority of the Government, and, now, in the judgment of the President, firmly interwoven as an

integral and important part of our national policy."

And if we now admit Great Britain to exactly the same participation in privileges without the obligations originally demanded what becomes of such policy as was so persistently upheld?

Why did not Senator Root in fairness quote from the communication from Mr. Blaine to Mr. Lowell, November 19, 1881, in which Mr. Blaine objected to the perpetuity of the Treaty on the ground that the Clayton-Bulwer Treaty

> gave the same right through the Canal to a warship bent upon an errand of destruction to the United States coasts, as to a vessel of the American Navy sailing for their defense, and that the United States demanded for its own defense the right to use only the same prevision as Great Britain so emphatically employed in respect of the Suez route, by the possession of strategic and fortified post and otherwise, for the defense of the British Empire.

No one doubts but that the United States would have made a treaty exchanging an agreement for equal treatment through the Canal for absolute control of the Canal as a war power about that time.

But Lord Granville was not ready to acquiesce in any concession.

President Arthur, December, 1881, in strong language stated the position of the United States as follows:

Meanwhile this Government learned that Colombia had proposed to the European powers to join in a guarantee of the neutrality of the proposed Panama Canal—a guarantee which would be in direct contravention of our obligations as the sole guarantor of the integrity of Colombian territory and of the neutrality of the Canal itself. My lamented predecessor felt it his duty to place before the European powers the reasons which make the prior guarantee of the United States indispensable, and for which the interjection of any foreign guarantee might be regarded as a superfluous and unfriendly act.

Senator Root quotes statements made by Mr. Blaine in 1881 and Mr. Cass in 1857, thirty-three and fifty-six years ago and says that it was such self-denying and solemn assurance that the United States sought a notification of the Clayton-Bulwer Convention and entered into the Hay-Pauncefote Treaty with the clause continuing the principle of Clause VIII which embodied the declarations of equality and the clause establishing the rule of equality taken from the Suez Canal Convention.

Even Senator Root must confess that Article VIII of the Clayton-Bulwer Convention covers neutrality as well as equal treatment and the careful pruning of the Suez Canal rules of every reference to equal treatment certainly shows how far afield Senator Root has had to go to found his case.

His case rests largely upon the fact that under

the conditions existing in 1850 and for a number of years after the necessary capital had perforce to come from Europe and hence we were making as sure that we should preserve all rights possible.

What was thought adequate up to the eighties was totally inadequate in 1900. I do not charge misquotation at all but certainly we see numerous examples of intentionally misleading quotation similar to picking one rule out of an article and giving it all the force it would have if it were unlimited and unqualified.

No one can follow Senator Root in his claim that President Roosevelt's statement that we were carrying on a great work in the interest of mankind gives rise to an argument that we could not profit as a people generally as well as through specific collection of tolls. We do not debate the passage of the Canal but hold it free to the use of all nations upon equal terms, except such as will extend to us reciprocal advantages for special privileges as will be done when the people understand the simple problems involved.

Why did not Senator Root in his contentions respecting coasting trade citing long ago intentions of the United States quote the clearly expressed attitude of this country as enunciated in the message of President Hayes when Mr. Evarts was Secretary of State:

> The policy of this country is a Canal under American

control. The United States cannot consent to the surrender of this control to any European power or to any combination of European powers. The Canal would be the great ocean thoroughfare between our Atlantic and Pacific coasts, and virtually a *part of the coast line* of the United States.

I have looked in vain for any renunciation of this stand. To argue that Great Britain through our agreeing to neutralize a canal, still has an overlordship of territory under our sovereignty, putting our territory under the servitude of a foreign power is to destroy our sovereign rights on the Isthmus. Senator Root flouts this sovereignty in his Senate speech of January 21, 1913, saying of the Canal Zone:

> It is not our territory except in trust.

The Hay-Bunau-Varilla Treaty does not bear out this statement. Article III of that treaty between Panama and the United States says:

> The Republic of Panama grants to the United States all the rights, powers and authority within the zone mentioned, which the United States would possess and exercise if it were the sovereign of the territory within which said lands and water are located, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

And under Article XIV covering the payment of the fixed sum of $10,000,000.00 and an annual payment after nine years of $250,000.00 we find:

> But no delay or difference of opinion under this article

or any other provisions shall affect or interrupt the full operation and effect of this convention in all other respects.

As regards the grant of land in the Zone, Justice Brewer decided that such a grant necessarily carried the fee title as it entirely excluded the rights, present or reversionary, of any other proprietor. If the United States has all the rights, power and authority within the Zone, which its sovereignty of the Zone could possess, and is to exercise these powers in perpetuity to the entire exclusion of the enjoyment by the Republic of Panama of any such rights, power or authority, it is manifest that there is but one sovereign over the Zone and that it is the United States.

Jefferson in doubt as to the Constitutional right to take over the Louisiana Purchase was given an opinion by Chief Justice Marshall as follows:

The Constitution confers absolutely upon the Government of the Union the powers of making war and of making treaties; consequently, that Government possesses the power of acquiring territory, either by conquest or by treaty.

And if we wish British endorsement we find in the protest of Sir Edward Grey:

Now that the United States has become the practical sovereign of the Canal, His Majesty's Government do

not question its title to exercise belligerent rights for its protection.

And let us not forget that in Article I of the Hay-Bunau-Varilla Treaty the "United States guarantees and will maintain the independence of the Republic of Panama."

The change of territorial sovereignty referred to in the Treaty did not contemplate ownership resting in one or the other parties to the Treaty.

Of course Senator Root's arguments as to coasting trade are far fetched and as we have full right to prefer all classes of our vessels they are not material. As far back as the Treaty of 1815 between the United States and Great Britain where equality of treatment of vessels was very clearly provided for we find coasting trade preferred as to each country.

Following the argument we see an attempt to justify the concession in the Grey protest that we may protect the Canal, by attempting to square the Suez rules with the Panama rules, of course omitting the presentation of such parts of the rules as make their claims impossible. Basing his premise upon the validity of the British claims Senator Root draws certain conclusions as to matters in dispute that are in no sense definite. Then he goes into the question of the arbitration of the Treaties. An effort has been made to separate such arbitration disposal from the Senate. It is to be hoped this may not be done.

Think what we should have had were the first treaty now in force as it would be but for submission to the Senate.

The writer has not the space to go fully into this question. The interpretation of the Treaty as challenged by Great Britain does affect our independence, our honor and interest of third parties.

It is a question whether land belonging to us shall be subject to limited sovereignty. Whether having acquired sovereignty over it such sovereignty is fraudulent. If another nation can enforce its decrees over the Canal it can enforce them over bodies of water in Central and South America and so jeopardize the Monroe Doctrine. It is not an arrogant refusal if we are within our rights in choosing not to go before a tribunal controlled by judges representing antagonistic interests.

The remainder of the speech is an appeal to arbitrate because if we do not, even though clearly within our rights, we may be charged with sharp practice—an international game of dare, which has worked well of late and nearly to our undoing but which will end with our people's awakening.

CHAPTER VII

THE BRITISH PROTEST

THIS protest is based just as Senator Root's was upon an attempt to read Article VIII of the Clayton-Bulwer Convention into the Hay-Pauncefote Treaty.

The protests and Mr. Knox's reply are given in the Appendix.

The answer of Mr. Knox is so conclusive and convincing that but little need be said.

But I find well informed men writing to the papers that we can grant subsidies equal to the tolls. They have not read the protest. For if we heed it we find very clear intimation that we must not do so.

There is some very devious reasoning indulged in by Sir Edward Grey. He says Article VIII does not mention belligerent action at all. But the Treaty recognizes that it covers neutrality and it is not mentioned except as a principle established. And what is protection for except to guard against possible harmful belligerent operations?

The earlier chapters cover this phase of the contention and the reader can now grasp the subtlety of the argument.

We find quoted in the protest other treaty pacts calling for equal treatment in language clearly expressed and because we managed to get it in Canada after twenty-one years of protest equal treatment explicitly provided we are told we must now accord equal treatment because an instrument 64 years old and now superseded called for it under conditions not now holding.

We again find stated that we surrendered the right to build by the Clayton-Bulwer Treaty and recovered it by the Hay-Pauncefote.

Sir Edward says:

> The case cannot be put more clearly than it was put by Mr. Hay himself, who, as Secretary of State, negotiated the Hay-Pauncefote Treaty, in the full account of the negotiations which he sent to the Senate Committee on Foreign Relations (Senate Document 746, 61st Congress, 3d Session).

He quotes Mr. Hay as follows:

> These rules are adopted in the Treaty with Great Britain as a consideration for getting rid of the Clayton-Bulwer Treaty.

Since he undoubtedly had the document before him there was no excuse, except that of grasping at straws, for failure to put this quotation as given; there is no period after treaty. The actual statement is:

> These rules are adopted in the Treaty with Great Britain as a consideration for getting rid of the Clayton-

Bulwer Treaty, and the only way in which *other* nations are bound by them is that *they* must comply with them if *they* would use the Canal.

The finishing of this sentence disposes of Sir Edward Grey's contention.

No one could assume the protest anything other than a policy of desperation with which to capitalize the great tory sentiment which seems now to be so prevalent in our land.

Sir Edward Grey threatens another protest in case we treat the vessels of all nations on terms of equality by barring railroad owned vessels from the Canal. He says in effect, "Apply your laws to your own vessels but do not treat the vessels of other nations in the same way."

Sir Edward Grey says he cannot see how the principle "which provides for equal treatment of British and United States ships has been maintained." No one else can, because it is not maintained. In so far as Article VIII secured neutrality it has been incorporated in principle. He cannot see what was obtained by England. If he will read Lord Lansdowne's communications he will see that she was relieved from the whole responsibility of "upholding the rules and maintaining the neutrality of the Canal"—the saving surely of a tidy sum.

Here is a definite acceptance by Lord Lansdowne of the fact that neutrality is secured through maintaining the rules of Article III.

We have covered the matter of the tolls being just and equitable. Suez pays 25 per cent. and over while foreign nations regard with complacency tolls that pay us less than two per cent.

There is a very clear intimate that while graciously consenting to our granting subsidies in some branches there may be cases where Great Britain will protest if used in connection with the Canal.

The boom in American shipbuilding and consequent ship owning was a dire warning to the great maritime countries of Europe. They bestirred themselves and the boom collapsed.

Of course laying down the law for us and interpreting Article III to their liking it is easy to figure out that all violations of such interpretation are in conflict with treaty provisions and in the end we are permitted to control the Canal; an empty honor as Sir Edward Grey construes it and one which we had in the 1850 agreement if we had furnished the money.

CHAPTER VIII

REGULATION OF COMMERCE

We must assume that Congress wishes to regulate commerce in the interest of the United States.

The Baltimore Convention platform representing the views of the party of the Administration advocates the encouragement of our merchant marine through constitutional regulation of commerce. Hence we must seek the meaning of constitutional regulation.

When the thirteen colonies of Great Britain achieved their independence, they were impoverished, with a pitiable small merchant marine, and conditions were such that continuing as they were their poverty would increase and their marine would vanish. These thirteen States had as many means of regulating commerce, leading to endless confusion and loss. So it was realized that a central power to regulate commerce was necessary, and such necessity was the compelling cause of the adoption of the Constitution.

We may safely believe that the men who took part in the framing of the Constitution knew what was meant by its provisions. They were leaders in public thought, so we find many of

them members of the First Congress that carried the ideals and intentions of the Constitution into effect by appropriate legislation.

A close study of the debates leading up to the drafting of the Constitution and the speeches and reports of our statesmen engaged in early legislation has shown me that the power to regulate commerce contemplated discrimination when necessary or desirable. To show how entirely the great men of the day agreed upon great fundamental principles essential to the general welfare I quote from "Debates of Congress," by Colonel Thomas H. Benton:

> In the House of Representatives in 1794 occurred one of the most interesting and elaborate debates which our Congress has furnished. It grew out of the clause of the Constitution conferring power to regulate commerce with foreign nations and gives the interpretation of its authors, which is wholly different in its nature and also distinct from the power to lay and collect import duties. The latter was to raise revenue, the former to make such discriminations in trade and transportation as to protect our merchants and ship owners from the adverse regulations and devices of our rivals.

Let us examine the laws passed at the First Congress and see how commerce with foreign nations was regulated, for surely their authors knew the meaning of constitutional regulation. So clear was the course as charted by the Constitution that Jefferson, Madison and Hamilton were in perfect accord.

First a discrimination was secured by allowing 10 per cent. less duty on goods imported in American vessels. Differential tonnage taxes were provided, 6 cents per ton on American-built and owned vessels, American coasting vessels paying but once a year; 30 cents per ton on American-built and foreign owned vessels and 50 cents per ton on vessels foreign owned and built. The great Asiatic trade was secured by grading duties on tea far lower in American vessels than if brought in foreign vessels. American register was confined to American-built vessels. The same care then for our people on sea and shore inspired laws making the berthing and messing of our seamen the best in the world. What an example in constructive statesmanship! Shipbuilding, ship operations and seamen all fostered by constitutional regulation enacted by Constitution makers.

Before these laws were passed English shipping was doing over 70 per cent. of our trade, but by 1812 this proportion was reversed. Until 1812 the average foreign balance due to profits in shipping, insurance, banking and passenger traffic was not less than $50,000,000. The drain of gold due to dependence upon foreign shipping, now about $350,000,000 annually, must be taken into account and added as an import; for balances of trade, not taking into account transportation charges, are as misleading as those of any shop

which omits its delivery charges from its statements.

Then the War of 1812, purposely provided to check our maritime growth, was fought. In 1815, as the price of peace, we abandoned discrimination in the direct trade, or trade to or from a country entirely in the ships of the two countries. But the crowning act of unwisdom and national betrayal was when we, in 1828, threw open our indirect trade to favored nations.

As a result of abandoning preference for our own commerce there has been a constant decline of the proportion of our trade carried in our ships from 92¼ per cent. in 1826 to about 8 per cent. at the present time.

Of course the losses due to our Civil War, the change from wood to iron, and from sails to steam, discrimination against our shipping by foreign insurance and rating companies, the bonded warehouses giving credit for duties, contracts for advance charters, foreign shipping conferences, trusts, pools and combines and payments now aggregating $50,000,000 annually to support their shipping, have supplemented this betrayal by our national legislators of a duty enjoined by the Constitution and their oath to support its provisions.

Preference, proven in effectiveness by the logic of successful application, is what is feared by the foreign nations. They do not fear subsidies, for

they know that competition on the ocean does not secure business, but, knowing the unpopularity of the word, they call helpful constitutional regulation "subsidy" to enlist such prejudice against it. Proper regulation gives preference at market rates; subsidies must cut rates without certainty of preference. Again, they prate of monopoly and wish us to ignore the menace of vast portent which has grown up on the seas. We are faced upon the ocean by a monopoly of shipbuilding, of commerce and of the arts and accessories of navigation, together with inordinate naval power. In many cases the disposition and price received by the producer are fixed by the carrier, so essentially necessary are trade connections and distributing agencies to the great maritime fleets of the present day, and, of course, such powers are used in every way possible to advance the material interests of the country of their flag.

The coasting trade is in no sense a monopoly. Any American who has a vessel, large or small, can engage in it. The ridiculous claim that remission of tolls is in the nature of a subsidy falls in the face of the fact that rates quoted for future delivery via the Canal are at certain figures, plus the Canal tolls, if exacted.

If constitutional regulation of commerce is to be adopted, we must adopt not only the policies of Jefferson for such regulation, but so great is our prostration that supreme effort is required to re-

habilitate our marine, and hence constructive statesmanship should adopt policies broadened along similar lines to utilize possibilities for preference not available in Jefferson's time.

Preference in canal use squares with the preference of our early laws and is no more a subsidy than it was then. Thus discriminating duties offering lower duties or no duties on goods brought in American vessels, differential tonnage taxes offering lower taxes on American vessels and discriminating tolls, offering lower tolls or no tolls on American vessels, are no more a subsidy than is putting an article on the free list a subsidy to the foreign maker, whose product drives a domestic product out of the home market, which our maker is taxed to maintain.

Article II of the Hay-Pauncefote Treaty as several times stated gives us full power to provide for the regulation and management of the Canal. Since American opponents are quick to grasp at strained interpretations we must throw light upon the meaning of regulation.

Since the Clayton-Bulwer Canal had to be regulated as well, we find in Article V of that instrument as a basis for the withdrawal of protection:

> If the persons or company undertaking or managing the Canal had established *regulations* concerning traffic by making unfair discriminations or by imposing oppressive exactions or unreasonable tolls.

Certainly regulation as contemplated there

covered the imposition of tolls and the laying down of conditions of traffic.

And we see this is the same idea of regulation as was had by the makers of our Constitution and our earlier laws.

The interpretation of regulation speaks just as clearly to-day as when even Jefferson, Madison and Hamilton were in accord as to its meaning.

A later exposition is that of the late Justice Field of the Supreme Court of the United States:

> To regulate commerce is to prescribe the rules by which it shall be governed—that is, the conditions under which it shall be conducted, to determine how far it shall be free and untrammeled, how far it shall be burdened by duties and imposts and how far it shall be prohibited.

We have control of the Canal, we prescribe rules for its belligerent use and then are left, outside the obligations of extending impartial belligerent use to enjoy the rights incident to construction, with full power to use the Canal to our advantage just as every other nation in the world would do.

While under our favored nation treaties we shall in general accord equal tolls to the vessels of other nations, there is nothing to prevent our making reciprocal concessions to other nations. On no other score could Senator Root have justified his negotiation of the tripartite treaty between Panama, Columbia and the United States.

APPENDICES

APPENDICES

THE CLAYTON-BULWER CONVENTION

The United States of America and Her Britannic Majesty, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a Convention their views and intentions with reference to any means of communication by ship canal, which may be constructed between the Atlantic and Pacific Oceans by the way of the River San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean,—The President of the United States has conferred full powers on John M. Clayton, Secretary of State of the United States; and Her Britannic Majesty on the Right Honorable Sir Henry Lytton Bulwer, a member of Her Majesty's Most Honorable Privy Council, Knight Commander of the Most Honorable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

ARTICLE I

The Governments of the United States and Great Britain hereby declare, that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said Ship Canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or

any alliance which either has or may have, to or with any State or People for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection or influence that either may possess with any State or Government through whose territory the said Canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or subjects of the other.

ARTICLE II

Vessels of the United States or Great Britain, traversing the said Canal shall, in case of war between the contracting parties, be exempted from blockade, detention or capture, by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said Canal as may hereafter be found expedient to establish.

ARTICLE III

In order to secure the construction of the said Canal, the contracting parties engage that, if any such Canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local Government or Governments through whose territory the same may pass, then the persons employed in making the said Canal and their property used, or to be used, for that object, shall be protected, from the commencement of the said Canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure or any violence whatsoever.

ARTICLE IV

The contracting parties will use whatever influence they re-

spectively exercise, with any State, States or Governments possessing, or claiming to possess, any jurisdiction or right over the territory which the said Canal shall traverse, or which shall be near the waters applicable thereto; in order to induce such States, or Governments, to facilitate the construction of the said Canal by every means in their power; and furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free Ports,—one at each end of the said Canal.

ARTICLE V

The contracting parties further engage that, when the said Canal shall have been completed they will protect it from interruption, seizure or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said Canal may forever be open and free, and the capital invested therein, secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said Canal, and guaranteeing its neutrality and security when completed, always understand that, this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either Government, if both Governments or either Government, should deem that the persons or company, undertaking or managing the same, adopt or establish such regulations concerning the traffic thereupon, as are contrary to the spirit and intention of this Convention,—either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months notice to the other.

ARTICLE VI

The contracting parties in this Convention engage to invite

every State with which both or either have friendly intercourse, to enter into stipulations with them similar to those which they have entered into with each other; to the end that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the Canal herein contemplated. And the contracting parties likewise agree that, each shall enter into Treaty stipulations with such of the Central American States, as they may deem advisable, for the purpose of more effectually carrying out the great design of this Convention, namely,—that of constructing and maintaining the said Canal as a ship-communication between the two Oceans, for the benefit of mankind, on equal terms to all, and of protecting the same; and they, also, agree that, the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiations of such treaty stipulations; and, should any differences arise as to right or property over the territory through which the said Canal shall pass,—between the States or Governments of Central America,—and such differences should, in any way, impede or obstruct the execution of the said Canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said Canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

ARTICLE VII

It being desirable that no time should be unnecessarily lost in commencing and constructing the said Canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons, or company, as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this Convention; and if any persons, or company, should already have, with any State through which the proposed Ship-Canal may pass, a contract for the construction of such a canal as that

specified in this Convention,—to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object,—and the said persons, or company, shall moreover, have made preparations and expended time, money, and trouble on the faith of such contract, it is hereby agreed that such persons, or company, shall have a priority of claim over every other person, persons, or company to the protection of the Governments of the United States and Great Britain, and be allowed a year, from the date of the exchange of the ratifications of this Convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood, that if, at the expiration of the aforesaid period, such persons, or company be not able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons, or company, that shall be prepared to commence and proceed with the construction of the Canal in question.

ARTICLE VIII

The Governments of the United States and Great Britain having not only desired in entering into this Convention, to accomplish a particular object, but, also, to establish a general principle, they hereby agree to extend their protection, by Treaty stipulations, to any other practical communications, whether by Canal or rail-way, across the Isthmus which connects North and South America; and, especially to the interoceanic communications,—should the same prove to be practicable, whether by Canal or rail-way,—which are now proposed to be established by the way of Tehuantepec, or Panama. In granting, however, their joint protection to any such Canals or rail-ways, as are by this Article specified, it is always understood by the United States and Great Britain, that the parties constructing or owning the same, shall impose no other charges or conditions of traffic thereupon, than the aforesaid

Governments shall approve of, as just and equitable; and, that the same Canals or rail-ways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall, also, be open on like terms to the citizens and subjects of every other State which is willing to grant thereto, such protection as the United States and Great Britain engage to afford.

ARTICLE IX

The ratifications of this Convention shall be exchanged at Washington, within six months from this day, or sooner, if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Convention, and have hereunto affixed our Seals.

Done, at Washington, the nineteenth day of April, Anno Domini one thousand eight hundred and fifty.

JOHN M. CLAYTON. [SEAL.]
HENRY LYTTON BULWER. [SEAL.]

THE HAY-PAUNCEFOTE TREATY

Whereas, a Convention between the United States of America and the United Kingdom of Great Britain and Ireland, to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, was concluded and signed by their respective plenipotentiaries at the city of Washington on the 18th day of November, 1901, the original of which Convention is word for word as follows:

The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland,

and of the British Dominions beyond the Seas, King, and Emperor of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed as their Plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, the Right Honourable Lord Pauncefote, G. C. B., G. C. M. G., His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States;

Who, having communicated to each other their full powers which were found to be in due and proper form, have agreed upon the following Articles:—

ARTICLE I

The High Contracting Parties agree that the present Treaty shall supersede the afore-mentioned Convention of the 19th April, 1850.

ARTICLE II

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or Corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

ARTICLE III

The United States adopts, as the basis of the neutralization of such ship canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the Regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same Rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this Article shall apply to waters adjacent to the canal, within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time, except in case of distress, and in such case, shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within

twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purposes of this Treaty, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents, and from acts calculated to impair their usefulness as part of the canal.

ARTICLE IV

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty.

ARTICLE V

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within six months from the date hereof.

In faith whereof the respective Plenipotentiaries have signed this Treaty and thereunto affixed their seals.

Done in duplicate at Washington, the 18th day of November, in the year of Our Lord one thousand nine hundred and one.

JOHN HAY. [SEAL.]
PAUNCEFOTE. [SEAL.]

THE HAY-BUNAU-VARILLA TREATY

The United States of America and the Republic of Panama being desirous to insure the construction of a ship canal across

the Isthmus of Panama to connect the Atlantic and Pacific Oceans, and the Congress of the United States of America having passed an act approved June 28, 1902, in furtherance of that object, by which the President of the United States is authorized to acquire within a reasonable time the control of the necessary territory of the Republic of Colombia, and the sovereignty of such territory being actually vested in the Republic of Panama, the high contracting parties have resolved for that purpose to conclude a convention and have accordingly appointed as their plenipotentiaries,—

The President of the United States of America, John Hay, Secretary of State, and

The Government of the Republic of Panama, Philippe Bunau-Varilla, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, thereunto specially empowered by said government, who after communicating with each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

The United States guarantees and will maintain the independence of the Republic of Panama.

ARTICLE II

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adja-

cent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

ARTICLE III

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

ARTICLE IV

As rights subsidiary to the above grants the Republic of Panama grants in perpetuity to the United States the right to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or water-power or other purposes, so far as the use of said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal.

ARTICLE V

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

ARTICLE VI

The grants herein contained shall in no manner invalidate the titles or rights of private land holders or owners of private property in the said zone or in or to any of the lands or waters granted to the United States by the provisions of any Article of this treaty, nor shall they interfere with the rights of way over the public roads passing through the said zone or over any of the said lands or waters unless said rights of way or private rights shall conflict with rights herein granted to the United States in which case the rights of the United States shall be superior. All damages caused to the owners of private lands or private property of any kind by reason of the grants contained in this treaty or by reason of the operations of the United States, its agents or employés, or by reason of the construction, maintenance, operation, sanitation and protection of the said Canal or of the works of sanitation and protection herein provided for, shall be appraised and settled by a joint Commission appointed by the Governments of the United States and the Republic of Panama, whose decisions as to such damages shall be final and whose awards as to such damages shall be paid solely by the United States. No part of the work on said Canal or the Panama Railroad or on any auxiliary works relating thereto and authorized by the terms of this treaty shall be prevented, delayed or impeded by or pending such proceedings to ascertain such damages. The appraisal of said private lands and private property and the assessment of damages to them shall be based upon their value before the date of this convention.

ARTICLE VII

The Republic of Panama grants to the United States within the limits of the cities of Panama and Colon and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain, any lands, buildings, water rights or other properties necessary and convenient for the construction, maintenance, operation and protection of the Canal and of any works of sanitation, such as the collection and disposition of sewage and the distribution of water in the said cities of Panama and Colon, which, in the discretion of the United States may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal and railroad. All such works of sanitation, collection and disposition of sewage and distribution of water in the cities of Panama and Colon shall be made at the expense of the United States, and the Government of the United States, its agents or nominees shall be authorized to impose and collect water rates and sewerage rates which shall be sufficient to provide for the payment of interest and the amortization of the principal of the cost of said works within a period of fifty years and upon the expiration of said term of fifty years the system of sewers and water works shall revert to and become the properties of the cities of Panama and Colon respectively, and the use of the water shall be free to the inhabitants of Panama and Colon, except to the extent that water rates may be necessary for the operation and maintenance of said system of sewers and water.

The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United States the Republic of Panama

grants to the United States the right and authority to enforce the same.

The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgment of the United States, able to maintain such order.

ARTICLE VIII

The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama and authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all the shares or part of the shares of that company; but the public lands situated outside of the Zone described in Article II of this treaty now included in the concessions to both said enterprises and not required in the construction or operation of the Canal shall revert to the Republic of Panama except any property now owned by or in possession of said companies within Panama or Colon or the ports or terminals thereof.

ARTICLE IX

The United States agrees that the ports at either entrance of the Canal and the waters thereof, and the Republic of Panama agrees that the towns of Panama and Colon shall be free for all time so that there shall not be imposed or collected custom house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction,

maintenance, operation, sanitation and protection of the main Canal, or auxiliary works, or upon the cargo, officers, crew or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the Canal and other works, and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal.

The Government of the Republic of Panama shall have the right to establish in such ports and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama and to prevent contraband trade. The United States shall have the right to make use of the towns and harbors of Panama and Colon as places of anchorage, and for making repairs, for loading, unloading, depositing, or trans-shipping cargoes either in transit or destined for the service of the Canal and for other works pertaining to the Canal.

ARTICLE X

The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the Canal, the railways and auxiliary works, tugs and other vessels employed in the service of the Canal, store houses, work shops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery, and other works, property, and effects appertaining to the Canal or railroad and auxiliary works, or their officers or employees, situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the Canal and railroad and auxiliary works.

ARTICLE XI

The United States agrees that the official dispatches of

the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for Canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

ARTICLE XII

The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the Canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said Canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

ARTICLE XIII

The United States may import at any time into the said zone and auxiliary lands, free of customs duties, imposts, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation and protection of the Canal and auxiliary works, and all provisions, medicines, clothing, supplies and other things necessary and convenient for the officers, employees, workmen and laborers in the service and employ of the United States and for their families. If any such articles are disposed of for use outside of the zone and auxiliary lands granted to the United States and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama.

ARTICLE XIV

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of

Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition to all other benefits assured to the Republic of Panama under this convention.

But no delay or difference of opinion under this Article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this convention in all other respects.

ARTICLE XV

The joint commission referred to in Article VI shall be established as follows:

The President of the United States shall nominate two persons and the President of the Republic of Panama shall nominate two persons and they shall proceed to a decision; but in case of disagreement of the Commission (by reason of their being equally divided in conclusion) an umpire shall be appointed by the two Governments who shall render the decision. In the event of the death, absence, or incapacity of a Commissioner or Umpire, or of his omitting, declining or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated. All decisions by a majority of the Commission or by the umpire shall be final.

ARTICLE XVI

The two Governments shall make adequate provision by future agreement for the pursuit, capture, imprisonment, detention and delivery within said zone and auxiliary lands to the authorities of the Republic of Panama of persons charged with the commitment of crimes, felonies or misdemeanors with-

out said zone and for the pursuit, capture, imprisonment, detention and delivery without said zone to the authorities of the United States of persons charged with the commitment of crimes, felonies and misdemeanors within said zone and auxiliary lands.

ARTICLE XVII

The Republic of Panama grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the Canal enterprise, and for all vessels passing or bound to pass through the Canal which may be in distress and be driven to seek refuge in said ports. Such vessels shall be exempt from anchorage and tonnage dues on the part of the Republic of Panama.

ARTICLE XVIII

The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section I of Article three of, and in conformity with all the stipulations of, the Treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

ARTICLE XIX

The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

ARTICLE XX

If by virtue of any existing treaty in relation to the territory of the Isthmus of Panama, whereof the obligations

shall descend or be assumed by the Republic of Panama, there may be any privilege or concession in favor of the Government or the citizens or subjects of a third power relative to an interoceanic means of communication which in any of its terms may be incompatible with the terms of the present convention, the Republic of Panama agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting its modifications or annulment, the Republic of Panama agrees to procure its modification or annulment in such form that there shall not exist any conflict with the stipulations of the present convention.

ARTICLE XXI

The rights and privileges granted by the Republic of Panama to the United States in the preceding Articles are understood to be free of all anterior debts, liens, trusts, or liabilities, or concessions or privileges to other Governments, corporations, syndicates or individuals, and consequently, if there should arise any claims on account of the present concessions and privileges or otherwise, the claimants shall resort to the Government of the Republic of Panama and not to the United States for any indemnity or compromise which may be required.

ARTICLE XXII

The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the Canal under Article XV of the concessionary contract with Lucien N. B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, con-

firms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Panama at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above mentioned party and companies, and all right, title and interest which it now has or may hereafter have, in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

The aforesaid rights and property shall be and are free and released from any present or reversionary interest or claims of Panama and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute, so far as concerns the Republic of Panama, excepting always the rights of the Republic specifically secured under this treaty.

ARTICLE XXIII

If it should become necessary at any time to employ armed forces for the safety or protection of the Canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

ARTICLE XXIV

No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United

States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

ARTICLE XXV

For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific Coast and on the western Caribbean Coast of the Republic at certain points to be agreed upon with the President of the United States.

ARTICLE XXVI

This convention when signed by the Plenipotentiaries of the Contracting Parties shall be ratified by the respective Governments and the ratifications shall be exchanged at Washington at the earliest date possible.

In faith whereof the respective Plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their respective seals.

Done at the City of Washington the 18th day of November in the year of our Lord nineteen hundred and three.

JOHN HAY [SEAL]

P. BUNAU VARILLA [SEAL]

THE SUEZ CANAL CONVENTION

(Signed at Constantinople October 29th, 1888.)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of Spain, and in his name the Queen Regent of the Kingdom; the President of the French Republic; His Majesty the King of Italy; His Majesty the King of the Netherlands, Grand Duke of Luxemburg, etc.; His Majesty the Emperor of All the Russias; and His Majesty the Emperor of the Ottomans; wishing to establish, by a conventional act, a definite system destined to guarantee at all times, and for all the powers, the free use of the Suez Maritime Canal, and thus to complete the system under which the navigation of this canal has been placed by the firman of His Imperial Majesty the Sultan, dated the 22nd February, 1866 (2 Zilkade, 1282), and sanctioning the concessions of His Highness the Khedive, have named their plenipotentiaries.

ARTICLE I

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

Consequently, the high contracting parties agree not in any way to interfere with the free use of the canal, in time of war as in time of peace.

The canal shall never be subjected to the exercise of the right of blockade.

ARTICLE II

The high contracting parties, recognizing that the fresh-water canal is indispensable to the maritime canal, take note of the engagements of His Highness the Khedive towards the Universal Suez Canal Co. as regards the fresh-water canal;

which engagements are stipulated in a convention bearing date the 18th March, 1863, containing an expose and four articles.

They undertake not to interfere in any way with the security of that canal and its branches, the working of which shall not be exposed to any attempt at obstruction.

ARTICLE III

The high contracting parties likewise undertake to respect the plant, establishments, buildings, and works of the maritime canal and the fresh-water canal.

ARTICLE IV

The maritime canal remaining open in time of war as a free passage, even to the ships of war of belligerents, according to the terms of Article I of the present treaty, the high contracting parties agree that no right of war, no act of hostility, nor any act having for its object to obstruct the free navigation of the canal, shall be committed in the canal and its ports of access, as well as within a radius of 3 marine miles from those ports, even though the Ottoman Empire should be one of the belligerent powers.

Vessels of war of belligerents shall not revictual or take in stores in the canal and its ports of access, except in so far as may be strictly necessary. The transit of the aforesaid vessels through the canal shall be effected with the least possible delay, in accordance with the regulations in force, and without any other intermission than that resulting from the necessities of the service.

Their stay at Port Said and in the roadstead of Suez shall not exceed 24 hours, except in case of distress. In such case they shall be bound to leave as soon as possible. An interval of 24 hours shall always elapse between the sailing of a belligerent ship from one of the ports of access and the departure of a ship belonging to the hostile power.

ARTICLE V

In time of war belligerent powers shall not disembark nor

embark within the canal and its ports of access either troops, munitions, or materials of war. But in case of an accidental hindrance in the canal men may be embarked or disembarked at the ports of access by detachments not exceeding 1,000 men, with a corresponding amount of war material.

ARTICLE VI

Prizes shall be subjected, in all respects, to the same rules as the vessels of war of belligerents.

ARTICLE VII

The powers shall not keep any vessel of war in the waters of the canal (including Lake Timsah and the Bitter Lakes).

Nevertheless, they may station vessels of war in the ports of access of Port Said and Suez, the number of which shall not exceed two for each power.

This right shall not be exercised by belligerents.

ARTICLE VIII

The agents in Egypt of the signatory powers of the present treaty shall be charged to watch over its execution. In case of any event threatening the security of the free passage of the canal, they shall meet on the summons of three of their number, under the presidency of their doyen, in order to proceed to the necessary verifications. They shall inform the Khedivial Government of the danger which they may have perceived, in order that that Government may take proper steps to insure the protection and the free use of the canal. Under any circumstances, they shall meet once a year to take note of the due execution of the treaty.

The last-mentioned meetings shall take place under the presidency of a special commissioner nominated for that purpose by the Imperial Ottoman Government. A commissioner of the Khedive may also take part in the meeting, and may preside over it in case of the absence of the Ottoman commissioner.

They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

ARTICLE IX

The Egyptian Government shall, within the limits of its powers resulting from the Firmans, and under the conditions provided for in the present treaty, take the necessary measures for insuring the execution of the said treaty.

In case the Egyptian Government should not have sufficient means at its disposal, it shall call upon the Imperial Ottoman Government, which shall take the necessary measures to respond to such appeal; shall give notice thereof to the signatory powers of the declaration of London of the 17th March, 1885; and shall, if necessary, concert with them on the subject.

The provisions of Articles IV, V, VII shall not interfere with the measures which shall be taken in virtue of the present article.

ARTICLE X

Similarly, the provisions of Articles IV, V, and VIII shall not interfere with the measures which His Majesty the Sultan and His Highness the Khedive, in the name of His Imperial Majesty, and within the limits of the firmans granted, might find it necessary to take for securing by their own forces the defense of Egypt and the maintenance of public order.

In case His Imperial Majesty the Sultan or His Highness the Khedive should find it necessary to avail themselves of the exceptions for which this article provides, the signatory powers of the declaration of London shall be notified thereof by the Imperial Ottoman Government.

It is likewise understood that the provisions of the four articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to insure by its own forces

the defense of its other possessions situated on the eastern coast of the Red Sea.

ARTICLE XI

The measures which shall be taken in the cases provided for by Articles IX and X of the present treaty shall not interfere with the free use of the canal. In the same cases the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited.

ARTICLE XII

The high contracting parties, by application of the principle of equality as regards the free use of the canal, a principle which forms one of the bases of the present treaty, agree that none of them shall endeavor to obtain with respect to the canal territorial or commercial advantages or privileges in any international arrangements which may be concluded. Moreover, the rights of Turkey as the territorial power are reserved.

ARTICLE XIII

With the exception of the obligations expressly provided by the clauses of the present treaty, the sovereign rights of His Imperial Majesty the Sultan, and the rights and immunities of His Highness the Khedive, resulting from the firmans, are in no way affected.

ARTICLE XIV

The high contracting parties agree that the engagements resulting from the present treaty shall not be limited by the duration of the act of concession of the Universal Suez Canal Company.

ARTICLE XV

The stipulations of the present treaty shall not interfere with the sanitary measures in force in Egypt.

ARTICLE XVI

The high contracting parties undertake to bring the present

treaty to the knowledge of the States which have not signed it, inviting them to accede to it.

ARTICLE XVII

The present treaty shall be ratified, and the ratifications shall be exchanged at Constantinople within the space of one month, or sooner if possible.

In faith of which the respective plenipotentiaries have signed the present treaty and have affixed to it the seal of their arms.

Done at Constantinople, the 29th day of the month of October, in the year 1888.

[L. S.]	W. A. WHITE.
[L. S.]	RADOWITZ.
[L. S.]	CALICE.
[L. S.]	MIGUEL FLOREZY GARCIA.
[L. S.]	C. DE MONTEBELLO.
[L. S.]	A. BLANC.
[L. S.]	GUS KEUN.
[L. S.]	NELIDOW.
[L. S.]	M. SAID.

NEGOTIATION OF THE HAY-PAUNCEFOTE TREATY

Prepared by Mr. Hay.

The Senate's amendments to the former treaty required (first) that there should be in plain and explicit terms an express abrogation of the Clayton-Bulwer treaty; (second) that the rules of neutrality adopted should not deprive the United States of the right to defend itself and to maintain public order; and (third) that other powers should not in any manner be made parties to the treaty by being invited to adhere to it.

For a better understanding of the scheme of the new treaty,

it may be well briefly to advert to the objections suggested by Great Britain to these several amendments.

AS TO THE ABROGATION OF THE CLAYTON-BULWER TREATY

Lord Lansdowne's objections were as to the manner of doing this and as to the substance. It was insisted that in the negotiations which led to the making of the former treaty no attempt had been made to ascertain the views of the British Government on such complete abrogation, and that the Clayton-Bulwer treaty being, as it claimed, an international compact of unquestionable validity, could not be abrogated without the consent of both parties to the contract.

There was in this connection an apparent misconception on the part of His Majesty's Government in respect to the proper function of the Senate in advising the ratification of a treaty with amendments proposed by it. It seemed to be regarded as an attempt on the part of the Senate to accomplish by its own vote, as a final act, the abrogation of an existing treaty, without an opportunity for full consideration of the matter by the other party. It was overlooked that the Senate was simply exercising its undoubted constitutional function of proposing amendments to be communicated to the other party to the contract, to ascertain its views upon the question, and it was hoped by the President—and the hope was expressed in submitting the treaty as amended by the Senate to the British Government—that the amendments would be found acceptable by it. Failing this, there was a full opportunity for His Majesty's Government, by counter propositions, to express its views on this and the other amendments, and so by a continuous negotiation to arrive, if possible, at a mutually satisfactory solution of all questions involved. Nevertheless, in view of the great importance of the Senate's amendments, taken together, it was deemed more expedient by Lord Lansdowne to reject them, but to leave the door open for fresh negotiations, which might have a more happy issue; and he earnestly deprecated a final failure of the parties to agree, and emphatically

expressed the desire of his Government to meet the views of the United States on this most important matter.

The principal substantial objection to the Senate's amendments, completely superseding the Clayton-Bulwer treaty, was that if this were done, the provisions of Article I of that treaty, which had been left untouched by the original Hay-Pauncefote treaty, would be annulled, and thereby both powers would, except in the vicinity of the canal, acquire entire freedom of action in Central America, a change which Lord Lansdowne thought would certainly be of advantage to the United States, and might be of substantial importance.

AS TO THE RIGHT OF THE UNITED STATES, NOTWITHSTANDING THE NEUTRAL RULES ADOPTED BY THE TREATY, TO DEFEND ITSELF BY ITS OWN FORCES, AND TO SECURE THE MAINTENANCE OF PUBLIC ORDER, COVERED BY WHAT WAS GENERALLY KNOWN AS THE DAVIS AMENDMENT.

His Majesty's Government criticised the vagueness of the language employed in the amendment, and the absence of all security as to the manner in which its ends might at some future time be interpreted; but thought that, however precisely it might be worded, it would be impossible to determine what might be the effect if one clause permitting defensive measures and another clause (which has now been omitted) prohibiting fortification of the canal were allowed to stand side by side in the same convention.

This amendment was strenuously objected to by Great Britain as involving a distinct departure from the principle of neutrality which had theretofore found acceptance by both Governments, inasmuch as it would, as construed by Lord Lansdowne, permit the United States in time of peace as well as in time of war to resort to whatever warlike acts it pleased in and near the canal, which would be clearly inconsistent with its intended neutral character and would deprive the commerce and navies of the world of the free use of it.

It was insisted that by means of the amendment the obliga-

tion of Great Britain to respect the neutrality of the canal under all circumstances would remain in force, while that of the United States, on the other hand, would be essentially modified, and that this would result in a one-sided agreement, by which Great Britain would be debarred from any warlike act in or near the canal, while the United States could resort to any such acts, even in time of peace, which it might deem necessary to secure its own safety.

Moreover, it was insisted by this amendment, in connection with the third amendment, which excluded other powers from becoming parties to the contract, Great Britain would be placed at a great disadvantage as compared with all other powers, inasmuch as she alone, with all her vast interests in the commerce of the world, would be bound under all circumstances to respect the neutrality of the canal, while the United States, even in time of peace, would have a treaty right to interfere with the canal on the plea of necessity for its own safety, and all other powers not being bound by the treaty could at their pleasure disregard its provisions.

AS TO THE AMENDMENT STRIKING OUT THE ARTICLE IN THE TREATY AS SUBMITTED TO THE SENATE, WHICH PROVIDED FOR AN INVITATION TO THE OTHER POWERS TO COME IN AND ADHERE TO IT.

This was emphatically objected to because if acquiesced in by Great Britain she would be bound by what Lord Lansdowne described as the "stringent rules of neutral conduct" prescribed by the treaty, which would not be equally binding upon the other powers, and it was urged that the adhesion of other powers to the treaty as parties would furnish an additional security for the neutrality of the canal.

In the hope of reconciling the conflicting views thus presented between the former treaty as amended by the Senate and the objections thereto of the British Government, the treaty now submitted for the consideration of the Senate was drafted.

The substantial differences from the former treaty are as follows:

First. In the new draft of treaty *the provision superseding the Clayton-Bulwer treaty as a whole,* instead of being parenthetically inserted, as by the former Senate amendment, was made the subject of an independent article and presented as the first article of the treaty. It was thus submitted to the consideration of the British Government in connection with the other substantial provisions of the treaty which declared the neutrality of the canal for the use of all nations on terms of entire equality.

Second. *By a change in the first line of Article III, instead of the United States and Great Britain jointly adopting as the basis of the neutralization of the canal, the rules of neutrality prescribed for its use as was provided by the former treaty, the United States now alone adopts them.*

This was regarded as a very radical and important change and one which would go far toward a reconciliation of the conflicting views of the two Governments.

It relieves Great Britain of all responsibility and obligation to enforce the neutrality of the canal, which by the former treaty had been imposed upon or assumed by her jointly with the United States, and thus meets the main stress of the objection which seemed to underlie or be interwoven with her other objections to the former Senate amendments. The United States alone as the sole owner of the canal, as a purely American enterprise, adopts and prescribes the rules by which the use of the canal shall be regulated, and assumes the entire responsibility and burden of enforcing, without the assistance of Great Britain or any other nation, its absolute neutrality.

It was also believed that this change would be in harmony with the national wish that this great interoceanic waterway should not only be constructed and owned, but exclusively controlled and managed by the United States.

Third. The next important change from the former treaty

consists in *the omission of the words "in time of war as in time of peace" from clause 1 of Article III.*

No longer insisting upon the language of the Davis amendment—which had in terms reserved to the United States express permission to disregard the rules of neutrality prescribed, when necessary to secure its own defense, which the Senate had apparently deemed necessary because of the provision in Rule I, that the canal should be free and open "in time of war as in time of peace" to the vessels of all nations—it was considered that the omission of the words "in time of war as in time of peace" would dispense with the necessity of the amendment referred to, and that war between the contracting parties, or between the United States and any other power, would have the ordinary effect of war upon treaties when not specially otherwise provided, and would remit both parties to their original and natural right of self-defense and give to the United States the clear right to close the canal against the other belligerent, and to protect it and defend itself by whatever means might be necessary.

Fourth. *In conformity with the Senate's emphatic rejection of Article III of the former treaty, which provided that the high contracting parties would, immediately upon the exchange of ratifications, bring it to the notice of other powers and invite them to adhere to it, no such provision was inserted in the draft of the new treaty.*

It was believed that the declaration that the canal should be free and open to all nations on terms of entire equality (now that Great Britain was relieved of all responsibility and obligation to enforce and defend its neutrality) would practically meet the force of the objection which had been made by Lord Lansdowne to the Senate's excision of the article inviting the other powers to come in, viz., that Great Britain was placed thereby in a worse position than other nations in case of war with the United States.

Fifth. *The next change from the former treaty is the omission of the provision in clause 7 of Article III, which prohib-*

ited the fortification of the canal, and the transfer to clause 2 of the remaining provision of clause 7, that the United States shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

The whole theory of the treaty is that the canal is to be an entirely American canal. The enormous cost of constructing it is to be borne by the United States alone. When constructed, it is to be exclusively the property of the United States and is to be managed, controlled, and defended by it. Under these circumstances, and considering that now by the new treaty Great Britain is relieved of all the responsibility and burden of maintaining its neutrality and security, it was thought entirely fair to omit the prohibition that *"no fortification shall be erected commanding the canal or the waters adjacent."*

Sixth. It will be observed that, although the words "in time of war as in time of peace" had been omitted from clause 1 of Article III upon the theory that the omission of these words would dispense with the necessity of the Davis amendment, and that war between the United States and any other power would have the ordinary effect of war upon treaties and remit both parties to their natural right of self-defense—the same words are retained in the sixth clause of Article III, which provides that the plant, establishment, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed part of it for the purposes of this treaty, and "in time of war as in time of peace" shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness.

It was considered that such specific provision was in the general interest of commerce and of civilization, and that all nations would regard such a work as sacred under all circumstances.

It was hoped that the changes above enumerated from the former treaty would practically reconcile the conflicting contentions of the two Governments and would lead to the much-

desired result of an entire concurrence of views between them.

With the exception of these changes care was taken in the draft of the new treaty to preserve the exact language, which had passed both the Senate and the British Government without objection, and, as is believed, without criticism.

The hope that the changes thus made had effectually met the British objections to the former treaty as amended by the Senate was almost realized.

The proposed draft of the new treaty was transmitted to Lord Lansdowne, and after mature deliberation he proposed on the part of His Majesty's Government only three substantial amendments.

He recognized the weighty importance of the change by which Great Britain was relieved of all responsibility for enforcing the neutrality and maintaining the security of the canal, and that all this burden was solely assumed by the United States. He also appreciated the importance of the other proposed changes in the direction of harmony.

Under this modified aspect of the relations of the two nations to the canal, he was not indisposed to consent to the abrogation of the Clayton-Bulwer treaty if the "general principle" of neutrality, which was reaffirmed in the preamble of the new treaty as well as of the former one, should be preserved and secured against any change of sovereignty or other change of circumstances in the territory through which the canal is intended to pass, and that the rules adopted as the basis of neutralization should govern, as far as possible, all interoceanic communication across the Isthmus. He referred in this connection to Articles I and VIII of the Clayton-Bulwer treaty.

He therefore proposed, by way of amendment, the insertion of an additional article, on the acceptance of which His Majesty's Government would be inclined to withdraw its objection to the formal abrogation of the Clayton-Bulwer treaty.

The amendment thus proposed by him was in the following language, viz.:

In view of the permanent character of this treaty, whereby the

general principle established by Article VIII of the Clayton-Bulwer treaty is reaffirmed, the high contracting parties hereby declare that the rules laid down in the last preceding article shall, so far as they may be applicable, govern all interoceanic communication across the Isthmus which connects North and South America, and that no change of territorial sovereignty or other change of circumstances shall affect such general principle or the obligations of the high contracting parties under this treaty.

This proposed article was regarded by the President as too far-reaching for the purpose in view, and as converting the vague and indefinite provisions of the eighth article of the Clayton-Bulwer treaty, which contemplated only future treaty stipulations when any new route should prove to be practicable, into a very definite and certain present treaty, fastening the crystallized rules of neutrality adopted now for this canal upon every other interoceanic communication across the Isthmus, and as perpetuating in a more definite and extended form, by a sort of reenactment of the eighth article, the embarrassing effects of the Clayton-Bulwer treaty, of which the United States hoped to be relieved altogether.

He believed that now that a canal is about to be built at the sole cost of the United States for the equal benefit of all nations, it was sufficient for the present treaty to provide for that one canal, and that it was hardly within the range of possibility that the United States would ever build more than one canal between the two oceans.

The President was, however, not only willing, but desirous, that the "general principle" of neutralization referred to in the preamble of this treaty should be applicable to this canal now intended to be built, notwithstanding any change of sovereignty or of international relations of the territory through which it should pass. This "general principle" of neutralization had always in fact been insisted upon by the United States, and he recognized the entire justice of the request of Great Britain that if she should now surrender the material interest which had been secured to her by the first article of the Clayton-Bulwer treaty, which might result in the indefinite future should the territory traversed by the canal

undergo a change of sovereignty, this "general principle" should not be thereby affected or impaired.

These views were communicated to His Majesty's Government, and as a substitute for the article proposed by Lord Lansdowne the following was proposed on the part of the United States:

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization, or the obligations of the high contracting parties under the present treaty.

Upon a full exchange of views, this article proposed by the United States was accepted by Great Britain and becomes Article IV of the treaty now submitted. It is thought to do entire justice to the reasonable demands of Great Britain in preserving the general principle of neutralization and at the same time to relieve the United States of the vague, indefinite, and embarrassing obligations imposed by the eighth article of the Clayton-Bulwer treaty.

During the discussions upon this article it was suggested that although no particular route was mentioned in the proposed treaty as the route to be traversed by the canal, yet as the canal had been so commonly mentioned as the "Nicaragua Canal," and the intended treaty as the "Nicaragua Canal treaty," it might possibly be claimed that the treaty did not apply to a canal by the Panama route, or by any other possible route. But it had always been intended by the President that the treaty should apply to the canal which should be first constructed, by whichever or whatever route, and to remove the apprehension referred to and to exclude all possible doubt in the matter, it was agreed that the preamble should be amended *by inserting in the preamble after the word "oceans" the words "by whatever route may be considered expedient."*

His Majesty's Government at first strenuously objected to the absence from the treaty of any provision for other powers

coming in, so as to be bound by its terms. It protested against being bound by what it regarded as stringent rules of neutrality which should not be equally binding upon other powers.

Lord Lansdowne accordingly proposed the following amendment, viz.:

To insert in Rule I of Article III, after the word "nation," the words "which shall agree to observe these rules," and in the following line, after the word "nation," the words "so agreeing," so as to make the clause read:

"1. The canal shall be free and open to the vessels of commerce and of war of all nations *which shall agree to observe these rules*, on terms of entire equality, so that there shall be no discrimination against any nation *so agreeing*," etc.

The President, however, could not consent to this amendment, because he apprehended that it might be construed as making the other powers parties to the contract and as giving them contract rights in the canal, and that it would thus practically restore to the treaty the substance of the provision which the Senate had struck out as Article III of the former treaty. He believed also that there was a strong national feeling against giving to the other powers anything in the nature of a contract right in an affair so peculiarly American as the canal; that no other powers had now any right in the premises or anything to give up or part with as consideration for acquiring such a contract right; that they are to rely on the good faith of the United States in its declaration to Great Britain in this treaty; and that it adopts the rules and principles of neutralization there set forth. These rules are adopted in the treaty with Great Britain as a consideration for getting rid of the Clayton-Bulwer treaty, and the only way in which other nations are bound by them is that they must comply with them if they would use the canal.

It was also apparent that the proposed amendment if accepted would make Rule I more objectionable than the third article of the former treaty, which was stricken out by the Senate's amendment, for that only invited other powers to

come in and become parties to the contract *after ratification,* whereas the proposed provision would rather compel other powers to come in and become parties to the contract *in the first instance* as a condition precedent to the use of the canal by them.

Upon due consideration of these suggestions, and at the same time to put all the other powers upon the same footing, viz., that they could use the canal only by complying with the rules of neutrality adopted and prescribed—an amendment to Lord Lansdowne's amendment was proposed and agreed upon, viz.:

> To strike out from his amendment the words, "which shall agree to observe" and substitute therefor the word "observing," and in the next line to strike out the words "so agreeing," and to insert before the word "nation" the word "such."

This made the clause as finally agreed upon and found in the treaty as now submitted for the consideration of the Senate:

> *The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation,* etc.

Thus the whole idea of contract right in the other powers is eliminated, and the vessels of any nation which shall refuse or fail to observe the rules adopted and prescribed may be deprived of the use of the canal.

One other amendment proposed by Lord Lansdowne was regarded by the President as so entirely reasonable that it was agreed to without discussion. This was the insertion at the end of clause 1 of Article III the words: *"Such conditions and charges of traffic shall be just and equitable,"* and the word "convention," wherever it occurs, has been changed to "treaty."

It is believed that this memorandum will put the Senate

Committee on Foreign Relations in full possession of the history of all changes in the treaty since the action of the Senate on the former amendment.

No. 1.

Lord Pauncefote to the Marquis of Lansdowne.

WASHINGTON, *December 24, 1900.*
(Received Jan. 7, 1901.)

MY LORD: I have the honor to transmit to your lordship a copy of a note which I have received from the United States Secretary of State, formally announcing to me, for the information of Her Majesty's Government, the ratification of the Nicaragua Canal treaty by the Senate on the 20th instant, with three amendments.

Mr. Hay, after giving the text of those amendments, states that he has instructed the United States ambassador in London to express to your lordship the hope of his Government that the amendments will be found acceptable to that of Her Majesty.

I have, etc., PAUNCEFOTE.

[Inclosure 1 in No. 1.]

Mr. Hay to Lord Pauncefote.

DEPARTMENT OF STATE,
Washington, December 22, 1900.

EXCELLENCY: I have the honor to inform you that the Senate by its resolution of the 20th December last, has given its advice and consent to the ratification of the convention, signed at Washington on the 5th of February last by the respective plenipotentiaries of the United States and Great Britain, to facilitate the construction of a ship canal to connect the Atlantic and Pacific oceans and to remove any objection

which might arise out of the convention commonly called the Clayton-Bulwer treaty, with the following amendments:

1. After the words "Clayton-Bulwer convention" and before the word "adopt" in the preamble of Article II, the words "which convention is hereby superseded" are inserted.

2. A new paragraph is added to the end of section 5 of Article II in the following language:

> It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4, and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

3. Article III reading:

> The high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers, and invite them to adhere to it—

is stricken out.

4. Article IV is made Article III.

I inclose a printed copy of the convention as signed,[1] and a copy of it showing its reading as amended by the Senate.

I have instructed Mr. Choate to express to the Marquis of Lansdowne this Government's hope that the amendments will be found acceptable to that of Her Majesty.

The supplementary convention which I signed with you on the 5th May last, prolonging the time within which the ratifications of the convention of the 5th February last shall be exchanged, for a period of seven months from the 5th August last, has been consented to by the Senate without amendment.

I have, etc. JOHN HAY.

[Inclosure in No. 1.]

Convention of February 5, 1900, as amended by the Senate.

The United States of America, and Her Majesty, the Queen

[1] See United States No. 1 (1900.)

of the United Kingdom of Great Britain and Ireland, Empress of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objection which may arise out of the convention of the 19th April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that convention, have for that purpose appointed as their plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And Her Majesty the Queen of Great Britain and Ireland, Empress of India, the Right Honorable Lord Pauncefote, G.C.B., G.C.M.G., Her Majesty's ambassador extraordinary and plenipotentiary to the United States;

Who, having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present convention, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

ARTICLE II

The high contracting parties, desiring to preserve and maintain the "general principle" of neutralization established in Article VIII of the Clayton-Bulwer convention, which convention is hereby superseded, adopt, as the basis of such neutrali-

zation, the following rules, substantially as embodied in the convention between Great Britain and certain other powers, signed at Constantinople, the 29th October, 1888, for the free navigation of the Suez Maritime Canal, that is to say:

1. The canal shall be free and open, in time of war as in time of peace, to the vessels of commerce and of war of all nations, on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic, or otherwise.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay, in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal, within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4, and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by

its own forces the defense of the United States and the maintenance of public order.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purposes of this convention, and in time of war as in time of peace, shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

7. No fortifications shall be erected commanding the canal or the waters adjacent. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

ARTICLE III

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged at Washington or at London, within six months from the date hereof, or earlier, if possible.

In faith whereof the respective plenipotentiaries have signed this convention and thereunto affixed their seals.

Done in duplicate at Washington, the 5th day of February, in the year of our Lord, 1900.

JOHN HAY.
PAUNCEFOTE.

No. 2.

The Marquis of Lansdowne to Lord Pauncefote.

FOREIGN OFFICE, *February 22, 1901.*

MY LORD: The American ambassador has formally communicated to me the amendments introduced by the Senate of the United States into the convention, signed at Washing-

ton in February last, to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans.

These amendments are three in number, namely:

1. The insertion in Article II, after the reference to Article VIII, of the Clayton-Bulwer Convention, of the words "which convention is hereby superseded."

2. The addition of a new paragraph after section 5 of Article II in the following terms:

> It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4, and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

3. The excision of Article III, which provides that—

> The high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of other powers and invite them to adhere to it.

Mr. Choate was instructed to express the hope that the amendments would be found acceptable by Her Majesty's Government.

It is our duty to consider them as they stand, and to inform your excellency of the manner in which, as the subject is now presented to us, we are disposed to regard them.

It will be useful, in the first place, to recall the circumstances in which negotiations for the conclusion of an agreement supplementary to the convention of 1850, commonly called the Clayton-Bulwer Treaty, were initiated.

So far as Her Majesty's Government were concerned, there was no desire to procure a modification of that convention. Some of its provisions had, however, for a long time past been regarded with disfavor by the Government of the United States, and in the President's message to Congress of December, 1898, it was suggested, with reference to a concession granted by the Government of Nicaragua, that some definite action by Congress was urgently required if the labors of the

past were to be utilized, and the linking of the Atlantic and Pacific Oceans by a practical waterway to be realized. It was further urged that the construction of such a maritime highway was more than ever indispensable to that intimate and ready intercommunication between the eastern and western seaboards of the United States demanded by the annexation of the Hawaiian Islands and the prospective expansion of American influence and commerce in the Pacific, and that the national policy called more imperatively than ever for the "control" of the projected highway by the Government of the United States.

This passage in the message having excited comment, your excellency made inquiries of the Secretary of State in order to elicit some information as to the attitude of the President. In reply, the views of the United States Government were very frankly and openly explained. You were also most emphatically assured that the President had no intention whatever of ignoring the Clayton-Bulwer Convention, and that he would loyally observe treaty stipulations. But in view of the strong national feeling in favor of the construction of the Nicaragua Canal, and of the improbability of the work being accomplished by private enterprise, the United States Government were prepared to undertake it themselves upon obtaining the necessary powers from Congress. For that purpose, however, they must endeavor, by friendly negotiation, to obtain the consent of Great Britain to such a modification of the Clayton-Bulwer Treaty as would, without affecting the "general principle" therein declared, enable the great object in view to be accomplished for the benefit of the commerce of the world. Although the time had hardly arrived for the institution of formal negotiations to that end, Congress not having yet legislated, the United States Government, nevertheless, were most anxious that your excellency should enter at once into *pourparlers* with a view to preparing, for consideration, a scheme of arrangement.

Her Majesty's Government agreed to this proposal, and the discussions which took place in consequence resulted in the draft convention which Mr. Hay handed to your excellency on the 11th January, 1899.

At that time the joint high commission over which the late Lord Herschell presided was still sitting. That commission was appointed in July, 1898, to discuss various questions at issue between Great Britain and the United States, namely, the fur-seal fishery, the fisheries off the Atlantic and Pacific coasts, the Alaskan boundary, alien-labor laws, reciprocity, transit of merchandise, mining rights, naval vessels on the Great Lakes, definition and marking of frontiers, and conveyance of persons in custody. But serious difficulties had arisen in the attempt to arrive at an understanding, and it had become doubtful whether any settlement would be effected.

In reply, therefore, to a request for a speedy answer with regard to the convention, the Marquis of Salisbury informed Mr. White, the American chargé d'affaires, that he could not help contrasting the precarious prospects and slowness of the negotiations which were being conducted by Lord Herschell with the rapidity of decision proposed in the matter of the convention. Her Majesty's Government might be reproached with having come to a precipitate agreement on a proposal which was exclusively favorable to the United States, while they had come to no agreement at all on the controversy where there was something to be conceded on both sides.

Shortly afterwards Lord Herschell intimated that the difficulties in regard to the question of the Alaskan boundary seemed insuperable, and that he feared it might be necessary to break off the negotiations of which he had hitherto had the charge. Upon this Lord Salisbury informed Mr. White that he did not see how Her Majesty's Government could sanction any convention for amending the Clayton-Bulwer Treaty, as the opinion of this country would hardly support them in making a concession which would be wholly to the benefit of

the United States, at a time when they appeared to be so little inclined to come to a satisfactory settlement in regard to the Alaskan frontier.

The last meeting of the joint high commission took place on the 20th February, 1899. Except for the establishment of a *modus vivendi* on the Alaskan frontier, no progress has been made since that date toward the adjustment of any of the questions which the high commissioners were appointed to discuss.

It was in these circumstances that the proposal for a canal convention was revived at the beginning of last year.

On the 21st January your lordship reported that a bill, originally introduced in 1899, had been laid before Congress, empowering the President to acquire from the Republics of Costa Rica and Nicaragua the control of such portion of territory as might be desirable or necessary, and to direct the Secretary of War, when such control had been secured, to construct the canal and make such provisions for defense as might be required for the safety and protection of the canal and the terminal harbors.

It was probable that the bill would be passed, and it was clear that additional embarrassment would be caused by an enactment opposed to the terms of the proposed convention, and in direct violation of the Clayton-Bulwer Treaty. On the other hand, your lordship's information led to the confident expectation that the convention as signed would, if agreed to by Her Majesty's Government, be ratified by the Senate.

In these circumstances Her Majesty's Government consented to reopen the question, and, after due consideration, determined to accept the convention unconditionally, as a signal proof of their friendly disposition and of their desire not to impede the execution of a project declared to be of national importance to the people of the United States.

Your Excellency stated that the United States Government expressed satisfaction at this happy result and appreciation

of the conciliatory disposition shown by Her Majesty's Government.

The convention was forthwith submitted to the Senate for ratification, and on the 9th March the committee charged with its examination reported in favor of ratification, with the insertion, subsequently adopted, after section 5 of Article II, of a paragraph containing provision that the rules laid down in the preceding sections should not apply to measures for the defense of the United States by its own forces and the maintenance of public order. This alteration was discussed by the Senate in secret session on the 5th April, but no vote was taken upon it nor upon the direct question of ratification.

The bill empowering the President to construct and provide for the defense of the canal passed the House of Representatives by a large majority on the 2d of May. The Senate, however, postponed consideration of the bill, although, favorably reported by the Committee on Interoceanic Canals.

After the recess, during which the presidential election took place, the discussion was resumed in the Senate. On the 20th of December the vote was taken, and resulted in the ratification of the convention with the three amendments which have been presented for the acceptance of His Majesty's Government.

The first of these amendments, that in Article II, declares the Clayton-Bulwer treaty to be "hereby superseded."

Before attempting to consider the manner in which this amendment will, if adopted, affect the parties to the Clayton-Bulwer treaty, I desire to call your excellency's attention to a question of principle which is involved by the action of the Senate at this point.

The Clayton-Bulwer Treaty is an international contract of unquestionable validity, a contract which, according to well-established international usage, ought not to be abrogated or modified, save with the consent of both the parties to the contract. In spite of this usage, His Majesty's Government find

themselves confronted by a proposal communicated to them by the United States Government, without any previous attempt to ascertain their views, for the abrogation of the Clayton-Bulwer Treaty.

The practical effect of the amendment can best be understood by reference to the inclosed copy of the articles of the treaty, Nos. I and VI, which, assuming that the United States Government would undertake all the obligations imposed by Article IV of the treaty, contain the only provisions[1] not replaced by new provisions, covering the same ground, in the convention.

Under Article I of the Clayton-Bulwer Treaty the two powers agreed that neither would occupy or fortify or colonize, or assume or exercise any dominion over any part of Central America, nor attain any of the foregoing objects by protection afforded to or alliance with any State or people of Central America. There is no similar agreement in the convention. If, therefore, the treaty were wholly abrogated, both powers would, except in the vicinity of the canal, recover entire freedom of action in Central America. The change would certainly be of advantage to the United States, and might be of substantial importance.

Under the other surviving portion of the treaty (part of Article VI) provision is made for treaties with the Central American States in furtherance of the object of the two powers and for the exercise of good offices should differences arise as to the territory through which the canal will pass. In this case abrogation would, perhaps, signify but little to this country. There is nothing in the convention to prevent Great Britain from entering into communication, or exercising good offices, with the Central American States, should difficulties hereafter arise between them and the United States.

The other two amendments present more formidable difficulties.

The first of them, which reserves to the United States the

[1] Printed in italics.

right of taking any measures which it may find necessary to secure by its own forces the defense of the United States, appears to His Majesty's Government to involve a distinct departure from the principle which has until now found acceptance with both Governments—the principle, namely, that in time of war as well as in time of peace the passage of the canal is to remain free and unimpeded, and is to be so maintained by the power or powers responsible for its control.

Were this amendment added to the convention the United States would, it is presumed, be within their rights, if at any moment when it seemed to them that their safety required it, in view of warlike preparations not yet commenced, but contemplated or supposed to be contemplated by another power, they resorted to warlike acts in or near the canal—acts clearly inconsistent with the neutral character which it has always been sought to give it, and which would deny the free use of it to the commerce and navies of the world.

It appears from the report of the Senate committee that the proposed addition to Article II was adopted from Article X of the Suez Canal Convention, which runs as follows:

Similarly, the provisions of Articles IV, V, VII, and VIII,[1] shall not interfere with the measures which His Majesty the Sultan and His Highness the Khedive, in the name of His Imperial Majesty, and within the limits of the firmans granted, might find it necessary to take for securing by their own forces the defense of Egypt and the maintenance of public order.

In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this article provides, the signatory powers of

[1] Article IV guarantees that the Maritime Canal shall remain open in time of war as a free passage even to the ships of war of belligerents, and regulates the revictualing, transit, and detention of such vessels in the canal.

Article V regulates the embarkation and disembarkation of troops, munitions or materials of war by belligerent powers in time of war.

Article VII prohibits the powers from keeping any vessel of war in the waters of the canal.

Article VIII imposes on the agents of the signatory powers in Egypt the duty of watching over the execution of the treaty, and taking measures to secure the free passage of the canal.

the declaration of London shall be notified thereof by the Imperial Ottoman Government.

It is likewise understood that the provisions of the four articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to insure by its own forces the defense of its other possessions situated on the eastern coast of the Red Sea.

It is, I understand, contended in support of the Senate amendment that the existence of the above provisions in the Suez Canal Convention justifies the demand now made for the insertion of analogous provisions in regard to the proposed Nicaragua Canal.

But the analogy which it has been attempted to set up fails in one essential particular. The banks of the Suez Canal are within the dominions of a territorial sovereign, who was a party to the convention, and whose established interests it was necessary to protect, whereas the Nicaragua Canal will be constructed in territory belonging not to the United States, but to Central American States, of whose sovereign rights other powers can not claim to dispose.

Moreover, it seems to have escaped attention that Article X of the Suez Canal Convention receives most important modification from Article XI, which lays down that "the measures which shall be taken in the cases provided for by Articles IX and X of the present treaty shall not interfere with the free use of the canal." The article proceeds to say that "in the same cases, the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited."

The last paragraph of Article VIII, which is specially alluded to, runs as follows:

They [i. e., the agents of the signatory powers in Egypt] shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

The situation which would be created by the addition of the new clause is deserving of serious attention. If it were to be added, the obligation to respect the neutrality of the canal in

all circumstances would, so far as Great Britain is concerned, remain in force; the obligation of the United States, on the other hand, would be essentially modified. The result would be a one-sided arrangement under which Great Britain would be debarred from any warlike action in or around the canal, while the United States would be able to resort to such action to whatever extent they might deem necessary to secure their own safety.

It may be contended that if the new clause were adopted, section 7 of Article II, which prohibits the erection of fortifications, would sufficiently insure the free use of the canal. This contention is, however, one which His Majesty's Government are quite unable to admit. I will not insist upon the dangerous vagueness of the language employed in the amendment, or upon the absence of all security as to the manner in which the words might, at some future time, be interpreted. For even if it were more precisely worded, it would be impossible to determine what might be the effect if one clause permitting defensive measures, and another forbidding fortifications, were allowed to stand side by side in the convention. To His Majesty's Government it seems, as I have already said, that the amendment might be construed as leaving it open to the United States at any moment, not only if war existed, but even if it were anticipated, to take any measures, however stringent or far-reaching, which, in their own judgment, might be represented as suitable for the purpose of protecting their national interests. Such an enactment would strike at the very root of that "general principle" of neutralization upon which the Clayton-Bulwer Treaty was based, and which was reaffirmed in the convention as drafted.

But the import of the amendment stands out in stronger relief when the third proposal is considered. This strikes out Article III of the convention, under which the high contracting parties engaged, immediately upon the convention being ratified, to bring it to the notice of other powers and to invite their adherence. If that adherence were given, the neu-

trality of the canal would be secured by the whole of the adhering powers. Without that adherence it would depend only upon the guarantee of the two contracting powers. The amendment, however, not only removes all prospect of the wider guarantee, but places this country in a position of marked disadvantage, compared with other powers which would not be subject to the self-denying ordinance which Great Britain is desired to accept. It would follow, were His Majesty's Government to agree to such an arrangement, that while the United States would have a treaty right to interfere with the canal in time of war, or apprehended war, and while other powers could with a clear conscience disregard any of the restrictions imposed by the convention, Great Britain alone, in spite of her enormous possessions on the American continent, in spite of the extent of her Australasian colonies and her interests in the East, would be absolutely precluded from resorting to any such action, or from taking measures to secure her interests in and near the canal.

I request that your excellency will explain to the Secretary of State the reasons, as set forth in this dispatch, why His Majesty's Government feel unable to accept the convention in the shape presented to them by the American ambassador, and why they prefer, as matters stand at present, to retain unmodified the provisions of the Clayton-Bulwer Treaty. His Majesty's Government have, throughout these negotiations, given evidence of their earnest desire to meet the views of the United States. They would on this occasion have been ready to consider in a friendly spirit any amendments of the convention, not inconsistent with the principles accepted by both Governments, which the Government of the United States might have desired to propose, and they would sincerely regret a failure to come to an amicable understanding in regard to this important subject.

Your lordship is authorized to read this dispatch to the Secretary of State and to leave a copy in his hands.

I am, etc., LANSDOWNE.

[Inclosure in No. 2.]

Articles I and VI of convention between Her Majesty and the United States of America relative to the establishment of a communication by ship canal between the Atlantic and Pacific Oceans, signed at Washington, April 19, 1850:

ARTICLE I

The Governments of Great Britain and the United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship canal; *agreeing that neither will ever* erect or maintain any fortifications commanding the same, or in the vicinity thereof, or *occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America, or of assuming or exercising dominion over the same.* Nor will Great Britain or the United States take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any State or Government through whose territory the said canal may pass for the purpose of acquiring or holding, directly or indirectly, for the subjects or citizens of the one, any rights or advantages in regard to commerce or navigation through the said canal, which shall not be offered, on the same terms, to the subjects or citizens of the other.

ARTICLE VI

The contracting parties in this convention engage to invite every State with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other to the end that

all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated; *and the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations; and should any differences arise as to right or property over the territory through which the said canal shall pass between the States or Governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of Great Britain and the United States will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.*

CORRESPONDENCE RESPECTING THE TREATY SIGNED AT WASHINGTON NOVEMBER 18, 1901, RELATIVE TO THE ESTABLISHMENT OF A COMMUNICATION BY SHIP CANAL BETWEEN THE ATLANTIC AND PACIFIC OCEANS.

[Printed in British Blue Book. "United States, 1902, No. 1."]

No. 1.

Lord Pauncefote to the Marquis of Lansdowne.

WASHINGTON, *April 25, 1901.*

MY LORD: Since the rejection by His Majesty's Government of the amendments introduced by the Senate in the Interoceanic Canal Convention of the 5th of February, 1900, Mr. Hay has been engaged in framing a new draft, which, as I

understand, he has drawn up after consultation with prominent Senators, and which he trusts will be acceptable to His Majesty's Government.

Mr. Hay has handed me a copy of the draft, which I have the honor to forward herewith for your lordship's consideration.

I have, etc., PAUNCEFOTE.

[Inclosure in No. 1.]

Draft of convention relative to the construction of an interoceanic canal.

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objection which may arise out of the convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that convention, have for that purpose appointed as their plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And His Majesty the King of Great Britain and Ireland, Emperor of India, the Right Honorable Lord Pauncefote, G. C. B., G. C. M. G., His Majesty's ambassador extraordinary and plenipotentiary to the United States;

Who, having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

The high contracting parties agree that the present convention shall supersede the aforementioned convention of the 19th April, 1850.

ARTICLE II

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present convention, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

ARTICLE III

The United States adopts, as the basis of the neutralization of said ship canal, the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal; that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations, on terms of entire equality, so that there shall be no discrimination against any nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, muni-

tions of war, or warlike materials in the canal except in case of accidental hinderance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purpose of this convention, and in time of war as in time of peace shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

ARTICLE IV

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within —— months from the date hereof.

In faith whereof the respective plenipotentiaries have signed this convention, and thereunto affixed their seals.

Done, in duplicate, at Washington the —— day of ——, in the year of our Lord one thousand nine hundred and one.

No. 2.

The Marquis of Lansdowne to Mr. Lowther.

FOREIGN OFFICE, *August 3, 1901.*

SIR: The draft convention dealing with the question of the

interoceanic canal, forwarded in Lord Pauncefote's dispatch of the 25th April, has been most carefully examined.

I inclose, for your information, the accompanying copy of a memorandum explaining the views of His Majesty's Government, which I have authorized Lord Pauncefote, should he think proper, to communicate to Mr. Hay.

His Majesty's Government have approached the consideration of this important question with a sincere desire to facilitate the progress of the great enterprise in which both Governments take such interest. They feel confident that the United States Government will give them credit for the friendly spirit in which Mr. Hay's proposals have been examined and that they will recognize that if it has been deemed necessary to suggest amendments at one or two points it has been because they are considered requisite for the purpose of bringing about the conclusion of a treaty which shall be accepted as equitable and satisfactory by the public of both countries.

I am, etc., LANSDOWNE.

[Inclosure 1 in No. 2.]

[Memorandum.]

In the dispatch which I addressed to Lord Pauncefote on the 22d February last, and which was communicated to Mr. Hay on the 11th March, I explained the reasons for which His Majesty's Government were unable to accept the amendments introduced by the Senate of the United States into the convention, signed at Washington in February, 1900, relative to the construction of an interoceanic canal.

The amendments were three in number, namely:

1. The insertion in Article II, after the reference to Article VIII of the Clayton-Bulwer convention, of the words "which convention is hereby superseded."

2. The addition of a new paragraph after section 5 of Article II in the following terms:

"It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4, and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the

defense of the United States and the maintenance of public order."

3. The excision of Article III, which provides that "the high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers and invite them to adhere to it."

2. The objections entertained by His Majesty's Government may be briefly stated as follows:

(1) The Clayton-Bulwer convention being an international compact of unquestionable validity could not be abrogated or modified save with the consent of both parties to the contract. No attempt had, however, been made to ascertain the views of Her Late Majesty's Government. The convention dealt with several matters for which no provision had been made in the convention of February, 1900, and if the former were wholly abrogated both powers would, except in the vicinity of the canal, recover entire freedom of action in Central America, a change which might be of substantial importance.

(2) The reservation to the United States of the right to take any measures which it might find necessary to secure by its own forces the defense of the United States appeared to His Majesty's Government to involve a distinct departure from the principle of neutralization which until then had found acceptance with both Governments, and which both were, under the convention of 1900, bound to uphold. Moreover, if the amendment were added, the obligation to respect the neutrality of the canal in all circumstances would, so far as Great Britain was concerned, remain in force; the obligation of the United States, on the other hand, would be essentially modified. The result would be a one-sided arrangement, under which Great Britain would be debarred from any warlike action in or around the canal, while the United States would be able to resort to such action even in time of peace to whatever extent they might deem necessary to secure their own safety.

(3) The omission of the article inviting the adherence of other powers placed this country in a position of marked disadvantage compared with other powers; while the United States would have a treaty right to interfere with the canal in

time of war, or apprehended war, and while other powers could with a clear conscience disregard any of the restrictions imposed by the convention of 1900, Great Britain alone would be absolutely precluded from resorting to any such action or from taking measures to secure her interests in and near the canal.

For these reasons His Majesty's Government preferred, as matters stood, to retain unmodified the provisions of the Clayton-Bulwer convention. They had, however, throughout the negotiations given evidence of their earnest desire to meet the views of the United States, and would sincerely regret a failure to come to an amicable understanding in regard to this important subject.

3. Mr. Hay, rightly apprehending that His Majesty's Government did not intend to preclude all further attempt at negotiation, has endeavored to find means by which to reconcile such divergences of view as exist between the two Governments, and has communicated a further draft of a treaty for the consideration of His Majesty's Government.

Following the order of the Senate amendments, the convention now proposed—

(1) Provides by a separate article that the Clayton-Bulwer Convention shall be superseded.

(2) The paragraph inserted by the Senate after section 5 of Article II is omitted.

(3) The article inviting other powers to adhere is omitted.

There are three other points to which attention must be directed:

(*a*) The words "in time of war as in time of peace" are omitted in rule 1.

(*b*) The draft contains no stipulation against the acquisition of sovereignty over the Isthmus or over the strip of territory through which the canal is intended to pass. There was no stipulation of this kind in the Hay-Pauncefote convention; but, by the surviving portion of Article I of the Clayton-Bulwer convention, the two Governments agreed that

neither would ever "occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America," nor attain any of the foregoing objects by protection offered to, or alliance with, any State or people of Central America.

(*c*) While the amendment reserving to the United States the right of providing for the defense of the canal is no longer pressed for, the first portion of rule 7, providing that "no fortifications shall be erected commanding the canal or the waters adjacent," has been omitted. The latter portion of the rule has been incorporated in rule 2 of the new draft, and makes provision for military police to protect the canal against lawlessness and disorder.

4. I fully recognize the friendly spirit which has prompted Mr. Hay in making further proposals for the settlement of the question, and while in no way abandoning the position which His Majesty's Government assumed in rejecting the Senate amendments, or admitting that the dispatch of the 22d February was other than a well-founded, moderate, and reasonable statement of the British case, I have examined the draft treaty with every wish to arrive at a conclusion which shall facilitate the construction of an interoceanic canal by the United States without involving on the part of His Majesty's Government any departure from the principles for which they have throughout contended.

5. In form the new draft differs from the convention of 1900, under which the high contracting parties, after agreeing that the canal might be constructed by the United States, undertook to adopt certain rules as the basis upon which the canal was to be neutralized. In the new draft the United States intimate *their* readiness "to adopt" somewhat similar rules as the basis of the neutralization of the canal. It would appear to follow that the whole responsibility for upholding these rules, and thereby maintaining the neutrality of the canal, would henceforward be assumed by the Government of the United States. The change of form is an important

one; but in view of the fact that the whole cost of the construction of the canal is to be borne by that Government, which is also to be charged with such measures as may be necessary to protect it against lawlessness and disorder, His Majesty's Government are not likely to object to it.

6. The proposal to abrogate the Clayton-Bulwer convention is not, I think, inadmissible if it can be shown that sufficient provision is made in the new treaty for such portions of the convention as ought, in the interests of this country, to remain in force. This aspect of the case must be considered in connection with the provisions of Article I of the Clayton-Bulwer convention which have already been quoted, and Article VIII referred to in the preamble of the new treaty.

Thus, in view of the permanent character of the treaty to be concluded and of the "general principle" reaffirmed thereby as a perpetual obligation, the high contracting parties should agree that no change of sovereignty or other change of circumstances in the territory through which the canal is intended to pass shall affect such "general principle" or release the high contracting parties, or either of them, from their obligations under the treaty, and that the rules adopted as the basis of neutralization shall govern, so far as possible, all interoceanic communications across the isthmus.

I would therefore propose an additional article in the following terms, on the acceptance of which His Majesty's Government would probably be prepared to withdraw their objections to the formal abrogation of the Clayton-Bulwer convention:

> In view of the permanent character of this treaty, whereby the general principle established by Article VIII of the Clayton-Bulwer convention is reaffirmed, the high contracting parties hereby declare and agree that the rules laid down in the last preceding article shall, so far as they may be applicable, govern all interoceanic communications across the isthmus which connects North and South America, and that no change of territorial sovereignty, or other change of circumstances, shall affect such general principle or the obligations of the high contracting parties under the present treaty.

7. The various points connected with the defense of the canal may conveniently be considered together. In the present draft the Senate amendment has been dropped, which left the United States at liberty to apply such measures as might be found "necessary to take for securing by its own forces the defense of the United States." On the other hand, the words "in time of war as in time of peace" are omitted from rule 1, and there is no stipulation, as originally in rule 7, prohibiting the erection of fortifications commanding the canal or the waters adjacent.

I do not fail to observe the important difference between the question as now presented to us and the position which was created by the amendment adopted in the Senate.

In my dispatch I pointed out the dangerous ambiguity of an instrument of which one clause permitted the adoption of defensive measures, while another prohibited the erection of fortifications. It is most important that no doubt should exist as to the intention of the contracting parties. As to this, I understand that by the omission of all reference to the matter of defense the United States Government desire to reserve the power of taking measures to protect the canal, at any time when the United States may be at war, from destruction or damage at the hands of an enemy or enemies. On the other hand, I conclude that, with the above exception, there is no intention to derogate from the principles of neutrality laid down by the rules. As to the first of these propositions I am not prepared to deny that contingencies may arise when, not only from a national point of view, but on behalf of the commercial interests of the whole world, it might be of supreme importance to the United States that they should be free to adopt measures for the defense of the canal at a moment when they were themselves engaged in hostilities.

It is also to be borne in mind that, owing to the omission of the words under which this country became jointly bound to defend the neutrality of the canal, and the abrogation of

the Clayton-Bulwer treaty, the obligations of Great Britain would be materially diminished.

This is a most important consideration. In my dispatch of the 22d February I dwelt upon the strong objection entertained by His Majesty's Government to any agreement under which, while the United States would have a treaty right to interfere with the canal in time of war, or apprehended war, Great Britain alone, in spite of her vast possessions on the American continent and the extent of her interests in the East, would be absolutely precluded from resorting to any such action, or from taking measures to secure her interests in and near the canal. The same exception could not be taken to an arrangement under which, supposing that the United States, as the power owning the canal and responsible for the maintenance of its neutrality, should find it necessary to interfere temporarily with its free use by the shipping of another power, that power would thereupon at once and *ipso facto* become liberated from the necessity of observing the rules laid down in the new treaty.

8. The difficulty raised by the absence of any provision for the adherence of other powers still remains. While indifferent as to the form in which the point is met, I must emphatically renew the objections of His Majesty's Government to being bound by stringent rules of neutral conduct not equally binding upon other powers. I would therefore suggest the insertion in rule 1, after "all nations," of the words "which shall agree to observe these rules." This addition will impose upon other powers the same self-denying ordinance as Great Britain is desired to accept, and will furnish an additional security for the neutrality of the canal, which it will be the duty of the United States to maintain.

As matters of minor importance, I suggest the renewal of one of the stipulations of Article VIII of the Clayton-Bulwer convention by adding to rule 1 the words "such conditions and charges shall be just and equitable," and the adoption of

"treaty" in lieu of "convention" to designate the international agreement which the high contracting parties may conclude.

Mr. Hay's draft, with the proposed amendments shown in italics, is annexed.

LANSDOWNE.

AUGUST 3, 1901.

[Inclosure 2 in No. 2.]

Draft of treaty relative to the construction of an interoceanic canal.

The United States of America and His Majesty, the King of the United Kingdom of Great Britain and Ireland, etc., being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objection which may arise out of the convention of the 19th April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that convention, have for that purpose appointed as their plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And His Majesty the King of Great Britain and Ireland, etc., the Right Honorable Lord Pauncefote, G. C. B., G. C. M. G., His Majesty's ambassador extraordinary and plenipotentiary to the United States;

Who, having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

The high contracting parties agree that the present *treaty* shall supersede the aforementioned convention of the 19th April, 1850.

ARTICLE II

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present *treaty,* the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

ARTICLE III

The United States adopts, as the basis of the neutralization of said ship canal, the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations *which shall agree to observe these rules,* on terms of entire equality, so that there shall be no discrimination against any nation *so agreeing,* or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. *Such conditions and charges of traffic shall be just and equitable.*

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal except in case of accidental hinderance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof for the purposes of this *treaty,* and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

ARTICLE III–A

In view of the permanent character of this treaty whereby the general principle established by Article VIII of the Clayton-Bulwer convention is reaffirmed, the high contracting parties hereby declare and agree that the rules laid down in the last preceding article shall, so far as they may be applicable, govern all interoceanic communications across the isthmus which connects North and South America, and that no change of territorial sovereignty, or other change of circumstances, shall affect such general principle or the obligations of the high contracting parties under the present treaty.

ARTICLE IV

The present *treaty* shall be ratified by the President of the United States, by and with the advice and consent of the

Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within —— months from the date hereof.

In faith whereof the respective plenipotentiaries have signed this *treaty,* and thereunto affixed their seals.

Done in duplicate at Washington, the —— day of ———, in the year of our Lord one thousand nine hundred and one.

No. 3.

The Marquis of Lansdowne to Mr. Lowther.

FOREIGN OFFICE, *September 12, 1901.*

SIR: I have to inform you that I have learned from Lord Pauncefote that Mr. Hay has laid before the President the memorandum, a copy of which was forwarded to you in my dispatch of the 3d August.

Mr. McKinley regarded, as did Mr. Hay, the consideration shown to the last proposals of the United States Government relative to the interoceanic canal treaty as in the highest degree friendly and reasonable.

With regard to the changes suggested by His Majesty's Government, Mr. Hay was apprehensive that the first amendment proposed to clause 1 of Article III would meet with opposition because of the strong objection entertained to inviting other powers to become contract parties to a treaty affecting the canal. If His Majesty's Government found it not convenient to accept the draft as it stood, they might perhaps consider favorably the substitution for the words "the canal shall be free and open to the vessels of commerce and of war of all nations which shall agree to observe these rules" the words "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules," and instead of "any nation so agreeing" the words "any such nation." This, it seemed to Mr. Hay, would accomplish the purpose aimed at by His Majesty's Government.

The second amendment in the same clause, providing that conditions and charges of traffic shall be just and equitable, was accepted by the President.

Coming to article numbered III–A, which might be called Article IV, Mr. Hay pointed out that the preamble of the draft treaty retained the declaration that the general principle of neutralization established in Article VIII of the Clayton-Bulwer convention was not impaired. To reiterate this in still stronger language in a separate article, and to give to Article VIII of the Clayton-Bulwer convention what seemed a wider application than it originally had, would, Mr. Hay feared, not meet with acceptance.

If, however, it seemed indispensable to His Majesty's Government that an article providing for the contingency of a change in sovereignty should be inserted, he thought it might state that:

> It is agreed that no change of territorial sovereignty or of the international relations of the country traversed by the beforementioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

This would cover the point in a brief and simple way.

In conclusion, Mr. Hay expressed his appreciation of the friendly and magnanimous spirit shown by His Majesty's Government in the treatment of this matter, and his hope that a solution would be attained which would enable the United States' Government to start at once upon the great enterprise which so vitally concerned the whole world, and especially Great Britain, as the first of commercial nations.

I am, etc., LANSDOWNE.

No. 4.

The Marquis of Lansdowne to Lord Pauncefote.

FOREIGN OFFICE, *October 23, 1901.*

MY LORD: I informed the United States chargé d'affaires to-day that His Majesty's Government had given their careful

attention to the various amendments which had been suggested in the draft interoceanic canal treaty, communicated by Mr. Hay to your lordship on the 25th April last, and that I was now in a position to inform him officially of our views.

Mr. Hay had suggested that in Article III, rule 1, we should substitute for the words "the canal shall be free and open to the vessels of commerce and of war of all nations which shall agree to observe these rules," etc., the words "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules," and in the same clause, as a consequential amendment, to substitute for the words "any nation so agreeing" the words "any such nation." His Majesty's Government were prepared to accept this amendment, which seemed to us equally efficacious for the purpose which we had in view, namely, that of insuring that Great Britain should not be placed in a less advantageous position than other powers, which they stopped short of conferring upon other nations a contractual right to the use of the canal.

We were also prepared to accept, in lieu of Article III-A, the new Article IV proposed by Mr. Hay, which, with the addition of the words "or countries" proposed in the course of the discussions here, runs as follows:

> It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

I admitted that there was some force in the contention of Mr. Hay, which had been strongly supported in conversation with me by Mr. Choate, that Article III–A, as drafted by His Majesty's Government, gave to Article VIII of the Clayton-Bulwer treaty a wider application than it originally possessed.

In addition to those amendments, we proposed to add in the preamble, after the words "being desirous to facilitate

the construction of a ship canal to connect the Atlantic and Pacific Oceans," the words "by whatever route may be considered expedient," and "such ship canal" for "said ship canal" in the first paragraph of Article III, words which, in our opinion, seemed to us desirable for the purpose of removing any doubt which might possibly exist as to the application of the treaty to any other interoceanic canals as well as that through Nicaragua.

I handed to Mr. White a statement showing the draft as it originally stood and the amendments proposed on each side.

I am, etc.,

LANSDOWNE.

No. 5.

Lord Pauncefote to the Marquis of Lansdowne.

WASHINGTON, *November 18, 1901.*

MY LORD: I have the honor to transmit to your lordship herewith a copy of a communication from Mr. Hay, dated the 8th November, formally placing on record the President's approval of the various amendments made in the draft of the new interoceanic canal treaty in the course of the negotiations, and particularly set forth in your lordship's dispatch to me of the 23d October.

I have, etc. PAUNCEFOTE.

[Inclosure in No. 5.]

Mr. Hay to Lord Pauncefote.

WASHINGTON, *November 8, 1901.*

EXCELLENCY: Upon your return to Washington, I had the honor to receive from you a copy of the instruction addressed to you on the 23d October last by the Marquis of Lansdowne, accepting and reducing to final shape the various amendments in the draft of an interoceanic canal treaty, as developed in the course of the negotiations lately conducted in London, through Mr. Choate, with yourself and Lord Lansdowne.

The treaty, being thus brought into a form representing a complete agreement on the part of the negotiators, has been submitted to the President, who approves of the conclusions reached, and directs me to proceed to the formal signature thereof.

I have, accordingly, the pleasure to send you a clear copy of the text of the treaty, embodying the several modifications agreed upon. Upon being advised by you that this text correctly represents your understanding of the agreement thus happily brought about, the treaty will be engrossed for signature at such time as may be most convenient to you.

I have, etc. JOHN HAY.

No. 6.

Lord Pauncefote to the Marquis of Lansdowne.

WASHINGTON, *November 19, 1901.*

MY LORD: I have the honor to report that, by appointment with Mr. Hay, I yesterday went to the State Department, accompanied by Mr. Wyndham, and signed the new treaty for the construction of an interoceanic canal.

I have, etc. PAUNCEFOTE.

No. 7.

[Telegraphic.]

Lord Pauncefote to the Marquis of Lansdowne.

WASHINGTON, *December 16, 1901.*

Canal treaty ratified by 72 votes to 6 in Senate to-day.

FIRST BRITISH PROTEST

Chargé d'Affaires Innes to the Secretary of State.

BRITISH EMBASSY
KINEO, MAINE.
July 8, 1912.

SIR: The attention of His Majesty's Government has been

called to the various proposals that have from time to time been made for the purpose of relieving American shipping from the burden of the tolls to be levied on vessels passing through the Panama Canal, and these proposals together with the arguments that have been used to support them have been carefully considered with a view to the bearing on them of the provisions of the treaty between the United States and Great Britain of November 18th 1901.

The proposals may be summed up as follows:—

1. To exempt all American shipping from the tolls,
2. To refund to all American ships the tolls which they may have paid,
3. To exempt American ships engaged in the coastwise trade,
4. To repay the tolls to American ships engaged in the coastwise trade.

The proposal to exempt all American shipping from the payment of the tolls, would, in the opinion of His Majesty's Government, involve an infraction of the treaty, nor is there, in their opinion, any difference in principle between charging tolls only to refund them and remitting tolls altogether. The result is the same in either case, and the adoption of the alternative method of refunding the tolls in preference to that of remitting them, while perhaps complying with the letter of the treaty, would still contravene its spirit.

It has been argued that a refund of the tolls would merely be equivalent to a subsidy and that there is nothing in the Hay-Pauncefote treaty which limits the right of the United States to subsidize its shipping. It is true that there is nothing in that treaty to prevent the United States from subsidizing its shipping and if it granted a subsidy His Majesty's Government could not be in a position to complain. But there is a great distinction between a general subsidy, either to shipping at large or to shipping engaged in any given trade, and a subsidy calculated particularly with reference to the amount of user of the Canal by the subsidized lines or

vessels. If such a subsidy were granted it would not, in the opinion of His Majesty's Government, be in accordance with the obligations of the Treaty.

As to the proposal that exemption shall be given to vessels engaged in the coastwise trade, a more difficult question arises. If the trade should be so regulated as to make it certain that only bona-fide coastwise traffic which is reserved for United States vessels would be benefited by this exemption, it may be that no objection could be taken. But it appears to my government that it would be impossible to frame regulations which would prevent the exemption from resulting, in fact, in a preference to United States shipping and consequently in an infraction of the Treaty.

I have the honor to be,

With the highest consideration,

Sir,

Your most obedient, humble Servant,

A. MITCHELL INNES.

SECOND BRITISH PROTEST

The Secretary of State for Foreign Affairs of Great Britain to Ambassador Bryce.

[Handed to the Secretary of State by the British Ambassador December 9, 1912.]

FOREIGN OFFICE, *November 14, 1912.*

SIR: Your Excellency will remember that on the 8th July, 1912, Mr. Mitchell Innes communicated to the Secretary of State the objections which His Majesty's Government entertained to the legislation relating to the Panama Canal, which was then under discussion in Congress, and that on the 27th August, after the passing of the Panama Canal Act and the issue of the President's memorandum on signing it, he informed Mr. Knox that when His Majesty's Government had had time to consider fully the Act and the memorandum a further communication would be made to him.

Since that date the text of the Act and the memorandum of the President have received attentive consideration at the hands of His Majesty's Government. A careful study of the President's memorandum has convinced me that he has not fully appreciated the British point of view, and has misunderstood Mr. Mitchell Innes' note of the 8th July. The President argues upon the assumption that it is the intention of His Majesty's Government to place upon the Hay-Pauncefote treaty an interpretation which would prevent the United States from granting subsidies to their own shipping passing through the Canal, and which would place them at a disadvantage as compared with other nations. This is not the case; His Majesty's Government regard equality of all nations as the fundamental principle underlying the treaty of 1901 in the same way that it was the basis of the Suez Canal Convention of 1888, and they do not seek to deprive the United States of any liberty which is open either to themselves or to any other nation; nor do they find either in the letter or in the spirit of the Hay-Pauncefote treaty any surrender by either of the contracting Powers of the right to encourage its shipping or its commerce by such subsidies as it may deem expedient.

The terms of the President's memorandum render it essential that I should explain in some detail the view which His Majesty's Government take as to what is the proper interpretation of the treaty, so as to indicate the limitations which they consider it imposes upon the freedom of action of the United States, and the points in which the Panama Canal Act, as enacted, infringes what His Majesty's Government hold to be their treaty rights.

The Hay-Pauncefote Treaty does not stand alone; it was the corollary of the Clayton-Bulwer Treaty of 1850. The earlier treaty was, no doubt, superseded by it, but its general principle, as embodied in article 8, was not to be impaired. The object of the later treaty is clearly shown by its preamble; it was "to facilitate the construction of a ship canal to

connect the Atlantic and Pacific oceans by whatever route may be deemed expedient, and to that end to remove any objection which may arise out of the Clayton-Bulwer Treaty to the construction of such canal under the auspices of the Government of the United States, without impairing the general principle of neutralization established in article 8 of that convention." It was upon that footing, and upon that footing alone, that the Clayton-Bulwer Treaty was superseded.

Under that treaty both parties had agreed not to obtain any exclusive control over the contemplated ship canal, but the importance of the great project was fully recognized, and therefore the construction of the canal by others was to be encouraged, and the canal when completed was to enjoy a special measure of protection on the part of both the contracting parties.

Under article 8 the two Powers declared their desire, in entering into the Convention, not only to accomplish a particular object, but also to establish a general principle, and therefore agreed to extend their protection to any practicable trans-isthmian communication, either by canal or railway, and either at Tehuantepec or Panama, provided that those who constructed it should impose no other charges or conditions of traffic than the two Governments should consider just and equitable, and that the canal or railway, "being open to the subjects and citizens of Great Britain and the United States on equal terms, should also be open to the subjects of any other State which was willing to join in the guarantee of joint protection."

So long as the Clayton-Bulwer Treaty was in force, therefore, the position was that both parties to it had given up their power of independent action, because neither was at liberty itself to construct the Canal and thereby obtain the exclusive control which such construction would confer. It is also clear that if the Canal had been constructed while the Clayton-Bulwer Treaty was in force, it would have been open, in accordance with article 8, to British and United States

ships on equal terms, and equally clear, therefore, that the tolls leviable on such ships would have been identical.

The purpose of the United States in negotiating the Hay-Pauncefote Treaty was to recover their freedom of action, and obtain the right, which they had surrendered, to construct the Canal themselves; this is expressed in the preamble to the treaty, but the complete liberty of action consequential upon such construction was to be limited by the maintenance of the general principle embodied in article 8 of the earlier treaty. That principle, as shown above, was one of equal treatment for both British and United States ships, and a study of the language of article 8 shows that the word "neutralization," in the preamble of the later treaty, is not there confined to belligerent operations, but refers to the system of equal rights for which article 8 provides.

If the wording of the article is examined, it will be seen that there is no mention of belligerent action in it at all. Joint protection and equal treatment are the only matters alluded to, and it is to one, or both, of these that neutralization must refer. Such joint protection has always been understood by His Majesty's Government to be one of the results of the Clayton-Bulwer Treaty of which the United States was most anxious to get rid, and they can scarcely therefore believe that it was such joint protection that the United States were willing to keep alive, and to which they referred in the preamble of the Hay-Pauncefote Treaty. It certainly was not the intention of His Majesty's Government that any responsibility for the protection of the Canal should attach to them in the future. Neutralization must therefore refer to the system of equal rights.

It thus appears from the preamble that the intention of the Hay-Pauncefote Treaty was that the United States was to recover the right to construct the trans-isthmian canal upon the terms that, when constructed, the canal was to be open to British and United States ships on equal terms.

The situation created was in fact identical with that re-

sulting from the Boundary Waters Treaty of 1909 between Great Britain and the United States, which provided as follows:—

"The high contracting parties agree that the navigation of all navigable boundary waters shall for ever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation, and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

"It is further agreed that so long as this treaty shall remain in force this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters and now existing, or which may hereafter be constructed on either side of the line. Either of the high contracting parties may adopt rules and regulations governing the use of such canals within its own territory, and may charge tolls for the use thereof; but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the high contracting parties, and they * * * shall be placed on terms of equality in the use thereof."

A similar provision, though more restricted in its scope, appears in article 27 of the Treaty of Washington, 1871, and Your Excellency will no doubt remember how strenuously the United States protested, as a violation of equal rights, against a system which Canada had introduced of a rebate of a large portion of the tolls on certain freight on the Welland Canal, provided that such freight was taken as far as Montreal, and how in the face of that protest the system was abandoned.

The principle of equality is repeated in article 3 of the Hay-Pauncefote Treaty, which provides that the United States adopts, as the basis of the neutralization of the Canal, certain rules, substantially as embodied in the Suez Canal Convention. The first of these rules is that the Canal shall be free and open to the vessels of commerce and war of all nations observing the rules on terms of entire equality, so that there shall be no discrimination against any such nation.

The word "neutralization" is no doubt used in article 3 in the

same sense as in the preamble, and implies subjection to the system of equal rights. The effect of the first rule is therefore to establish the provision, foreshadowed by the preamble and consequent on the maintenance of the principle of article 8 of the Clayton-Bulwer Treaty, that the Canal is to be open to British and United States vessels on terms of entire equality. It also embodies a promise on the part of the United States that the ships of all nations which observe the rules will be admitted to similar privileges.

The President in his memorandum treats the words "all nations" as excluding the United States. He argues that, as the United States is constructing the Canal at its own cost on territory ceded to it, it has, unless it has restricted itself, an absolute right of ownership and control, including the right to allow its own commerce the use of the Canal upon such terms as it sees fit, and that the only question is whether it has by the Hay-Pauncefote Treaty deprived itself of the exercise of the right to pass its own commerce free or remit tolls collected for the use of the Canal. He argues that article 3 of the treaty is nothing more than a declaration of policy by the United States that the Canal shall be neutral and all nations treated alike and no discrimination made against any one of them observing the rules adopted by the United States. "In other words, it was a conditional favored-nation treatment, the measure of which, in the absence of express stipulations to that effect, is not what the country gives to its own nationals, but the treatment it extends to other nations."

For the reasons they have given above His Majesty's Government believe this statement of the case to be wholly at variance with the real position. They consider that by the Clayton-Bulwer Treaty the United States had surrendered the right to construct the Canal, and that by the Hay-Pauncefote treaty they recovered that right upon the footing that the Canal should be open to British and United States vessels upon terms of equal treatment.

The case cannot be put more clearly than it was put by Mr.

Hay himself, who, as Secretary of State, negotiated the Hay-Pauncefote Treaty, in the full account of the negotiations which he sent to the Senate Committee on Foreign Relations (see Senate Document No. 746, 61st Congress, 3rd session) :—

"These rules are adopted in the treaty with Great Britain as a consideration for getting rid of the Clayton-Bulwer Treaty."

If the rules set out in the Hay-Pauncefote Treaty secure to Great Britain no more than most-favored-nation treatment, the value of the consideration given for superseding the Clayton-Bulwer Treaty is not apparent to His Majesty's Government. Nor is it easy to see in what way the principle of article 8 of the Clayton-Bulwer treaty, which provides for equal treatment of British and United States ships, has been maintained.

I notice that in the course of the debate in the Senate on the Panama Canal Bill the argument was used by one of the speakers that the third, fourth, and fifth rules embodied in article 3 of the treaty show that the words "all nations" cannot include the United States, because, if the United States were at war, it is impossible to believe that it could be intended to be debarred by the treaty from using its own territory for revictualing its war-ships or landing troops.

The same point may strike others who read nothing but the text of the Hay-Pauncefote Treaty itself, and I think it is therefore worth while that I should briefly show that this argument is not well founded.

The Hay-Pauncefote Treaty of 1901 aimed at carrying out the principle of the neutralization of the Panama Canal by subjecting it to the same régime as the Suez Canal. Rules 3, 4, and 5 of article 3 of the treaty are taken almost textually from articles 4, 5, and 6 of the Suez Canal Convention of 1888. At the date of the signature of the Hay-Pauncefote Treaty the territory, on which the Isthmian Canal was to be constructed, did not belong to the United States, consequently there was no need to insert in the draft treaty provisions cor-

responding to those in articles 10 and 13 of the Suez Canal Convention, which preserve the sovereign rights of Turkey and of Egypt, and stipulate that articles 4 and 5 shall not affect the right of Turkey, as the local sovereign, and of Egypt, within the measure of her autonomy, to take such measures as may be necessary for securing the defense of Egypt and the maintenance of public order, and, in the case of Turkey, the defense of her possessions on the Red Sea.

Now that the United States has become the practical sovereign of the Canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection.

For these reasons, His Majesty's Government maintain that the words "all nations" in rule 1 of article 3 of the Hay-Pauncefote Treaty include the United States, and that, in consequence, British vessels using the Canal are entitled to equal treatment with those of the United States, and that the same tolls are chargeable on each.

This rule also provides that the tolls should be "just and equitable." The purpose of those words was to limit the tolls to the amount representing the fair value of the services rendered, i. e., to the interest on the capital expended and the cost of the operation and maintenance of the Canal. Unless the whole volume of shipping which passes through the Canal, and which all benefits equally by its services, is taken into account, there are no means of determining whether the tolls chargeable upon a vessel represent that vessel's fair proportion of the current expenditure properly chargeable against the Canal, that is to say, interest on the capital expended in construction, and the cost of operation and maintenance. If any classes of vessels are exempted from tolls in such a way that no receipts from ships are taken into account in the income of the Canal, there is no guarantee that the vessels upon which tolls are being levied are not being made to bear more than their fair share of the upkeep. Apart altogether, therefore, from the provision in rule 1 about equality of treatment for all nations, the stipulation that the tolls shall be just and

equitable, when rightly understood, entitles His Majesty's Government to demand, on behalf of British shipping, that all vessels passing through the Canal, whatever their flag or their character, shall be taken into account in fixing the amount of the tolls.

The result is that any system by which particular vessels or classes of vessels were exempted from the payment of tolls would not comply with the stipulations of the treaty that the Canal should be open on terms of entire equality, and that the charges should be just and equitable.

The President, in his memorandum, argues that if there is no difference, as stated in Mr. Mitchell Innes' note of the 8th July, between charging tolls only to refund them and remitting tolls altogether, the effect is to prevent the United States from aiding its own commerce in the way that all other nations may freely do. This is not so. His Majesty's Government have no desire to place upon the Hay-Pauncefote Treaty an interpretation which would impose upon the United States any restriction from which other nations are free, or reserve to such other nation any privilege which is denied to the United States. Equal treatment, as specified in the treaty, is all they claim.

His Majesty's Government do not question the right of the United States to grant subsidies to United States shipping generally, or to any particular branches of that shipping, but it does not follow therefore that the United States may not be debarred by the Hay-Pauncefote Treaty from granting a subsidy to certain shipping in a particular way, if the effect of the method chosen for granting such subsidy would be to impose upon British or other foreign shipping an unfair share of the burden of the upkeep of the Canal, or to create a discrimination in respect of the conditions or charges of traffic, or otherwise to prejudice rights secured to British shipping by this Treaty.

If the United States exempt certain classes of ships from the payment of tolls the result would be a form of subsidy to

those vessels which His Majesty's Government consider the United States are debarred by the Hay-Pauncefote Treaty from making.

It remains to consider whether the Panama Canal Act, in its present form, conflicts with the treaty rights to which His Majesty's Government maintain they are entitled.

Under section 5 of the Act of the President is given, within certain defined limits, the right to fix the tolls, but no tolls are to be levied upon ships engaged in the coastwise trade of the United States, and the tolls, when based upon net registered tonnage for ships of commerce, are not to exceed 1 dollar 25c. per net registered ton, nor be less, *other than for vessels of the United States and its citizens,* than the estimated proportionate cost of the actual maintenance and operation of the Canal. There is also an exception for the exemptions granted by article 19 of the Convention with Panama of 1903.

The effect of these provisions is that vessels engaged in the coastwise trade will contribute nothing to the upkeep of the Canal. Similarly vessels belonging to the Government of the Republic of Panama will, in pursuance of the treaty of 1903, contribute nothing to the upkeep of the Canal. Again, in the cases where tolls are levied, the tolls in the case of ships belonging to the United States and its citizens may be fixed at a lower rate than in the case of foreign ships, and may be less than the estimated proportionate cost of the actual maintenance and operation of the Canal.

These provisions (1) clearly conflict with the rule embodied in the principle established in article 8 of the Clayton-Bulwer Treaty of equal treatment for British and United States ships, and (2) would enable tolls to be fixed which would not be just and equitable, and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote Treaty.

It has been argued that as the coastwise trade of the United States is confined by law to United States vessels, the exemption of vessels engaged in it from the payment of tolls cannot injure the interests of foreign nations. It is clear, however,

that the interests of foreign nations will be seriously injured in two material respects.

In the first place, the exemption will result in the cost of the working of the Canal being borne wholly by foreign-going vessels, and on such vessels, therefore, will fall the whole burden of raising the revenue necessary to cover the cost of working and maintaining the Canal. The possibility, therefore, of fixing the toll on such vessels at a lower figure than 1 dol. 25c. per ton, or of reducing the rate below that figure at some future time, will be considerably lessened by the exemption.

In the second place, the exemption will, in the opinion of His Majesty's Government, be a violation of the equal treatment secured by the treaty, as it will put the "coastwise trade" in a preferential position as regards other shipping. Coastwise trade cannot be circumscribed so completely that benefits conferred upon it will not affect vessels engaged in the foreign trade. To take an example, if cargo intended for an United States port beyond the Canal, either from east or west, and shipped on board a foreign ship could be sent to its destination more cheaply, through the operation of the proposed exemption, by being landed at an United States port before reaching the Canal, and then sent on as coastwise trade, shippers would benefit by adopting this course in preference to sending the goods direct to their destination through the Canal on board the foreign ship.

Again, although certain privileges are granted to vessels engaged in an exclusively coastwise trade, His Majesty's Government are given to understand that there is nothing in the laws of the United States which prevents any United States ship from combining foreign commerce with coastwise trade, and consequently from entering into direct competition with foreign vessels while remaining "prima facie" entitled to the privilege of free passage through the Canal. Moreover any restriction which may be deemed to be now applicable might at any time be removed by legislation or even perhaps by mere changes in the regulations.

In these and in other ways foreign shipping would be seriously handicapped, and any adverse result would fall more severely on British shipping than on that of any other nationality.

The volume of British shipping which will use the Canal will in all probability be very large. Its opening will shorten by many thousands of miles the waterways between England and other portions of the British Empire, and if on the one hand it is important to the United States to encourage its mercantile marine and establish competition between coastwise traffic and transcontinental railways, it is equally important to Great Britain to secure to its shipping that just and impartial treatment to which it is entitled by treaty, and in return for a promise of which it surrendered the rights which it held under the earlier convention.

There are other provisions of the Panama Canal Act to which the attention of His Majesty's Government has been directed. These are contained in section 11, part of which enacts that a railway company, subject to the Inter-State Commerce Act 1887, is prohibited from having any interest in vessels operated through the Canal with which such railways may compete, and another part provides that a vessel permitted to engage in the coastwise or foreign trade of the United States is not allowed to use the Canal if its owner is guilty of violating the Sherman Anti-Trust Act.

His Majesty's Government do not read this section of the Act as applying to, or affecting, British ships, and they therefore do not feel justified in making any observations upon it. They assume that it applies only to vessels flying the flag of the United States, and that it is aimed at practices which concern only the internal trade of the United States. If this view is mistaken and the provisions are intended to apply under any circumstances to British ships, they must reserve their right to examine the matter further and to raise such contentions as may seem justified.

His Majesty's Government feel no doubt as to the correct-

ness of their interpretation of the treaties of 1850 and 1901, and as to the validity of the rights they claim under them for British shipping; nor does there seem to them to be any room for doubt that the provisions of the Panama Canal Act as to tolls conflict with the rights secured to their shipping by the treaty. But they recognize that many persons of note in the United States, whose opinions are entitled to great weight, hold that the provisions of the Act do not infringe the conventional obligations by which the United States is bound, and under these circumstances they desire to state their perfect readiness to submit the question to arbitration if the Government of the United States would prefer to take this course. A reference to arbitration would be rendered unnecessary if the Government of the United States should be prepared to take such steps as would remove the objections to the Act which His Majesty's Government have stated.

Knowing as I do full well the interest which this great undertaking has aroused in the New World and the emotion with which its opening is looked forward to by United States citizens, I wish to add before closing this dispatch that it is only with great reluctance that His Majesty's Government have felt bound to raise objection on the ground of treaty rights to the provisions of the Act. Animated by an earnest desire to avoid points which might in any way prove embarrassing to the United States, His Majesty's Government have confined their objections within the narrowest possible limits, and have recognized in the fullest manner the right of the United States to control the Canal. They feel convinced that they may look with confidence to the Government of the United States to ensure that in promoting the interests of United States shipping, nothing will be done to impair the safeguards guaranteed to British shipping by treaty.

Your Excellency will read this dispatch to the Secretary of State and will leave with him a copy.

I am, &c., E. Grey.

REPLY OF SECRETARY OF STATE KNOX TO THE BRITISH PROTEST

It appears that three objections are made to the provisions of the Act; first, that no tolls are to be levied upon ships engaged in the coastwise trade of the United States; second, that a discretion appears to be given to the President to discriminate in fixing tolls in favor of ships belonging to the United States and its citizens as against foreign ships; and third, that an exemption has been given to the vessels of the Republic of Panama under Article 19 of the Convention with Panama of 1903.

Considered in the reverse order of their statement, the third objection, coming at this time, is a great and complete surprise to this Government. The exemption under that article applies only to the government vessels of Panama, and was part of the agreement with Panama under which the canal was built. The Convention containing the exemption was ratified in 1904, and since then to the present time no claim has been made by Great Britain that it conflicted with British rights. The United States has always asserted the principle that the status of the countries immediately concerned by reason of their political relation to the territory in which the canal was to be constructed was different from that of all other countries. The Hay-Herran Treaty with Colombia of 1903 also provided that the war vessels of that country were to be given free passage. It has always been supposed by this Government that Great Britain recognized the propriety of the exemptions made in both of those treaties. It is not believed, therefore, that the British Government intend to be understood as proposing arbitration upon the question of whether or not this provision of the Act, which in accordance with our treaty with Panama exempts from tolls the government vessels of Panama, is in conflict with the provisions of the Hay-Pauncefote Treaty.

Considering the second objection based upon the dis-

cretion thought to be conferred upon the President to discriminate in favor of ships belonging to the United States and its citizens, it is sufficient, in view of the fact that the President's proclamation fixing the tolls was silent on the subject, to quote the language used by the President in the memorandum attached to the Act at the time of signature, in which he says—

> It is not, therefore, necessary to discuss the policy of such discrimination until the question may arise in the exercise of the President's discretion.

On this point no question has as yet arisen which, in the words of the existing arbitration treaty between the United States and Great Britain, "it may not have been possible to settle by diplomacy," and until then any suggestion of arbitration may well be regarded as premature.

It is not believed, however, that in the objection now under consideration Great Britain intends to question the right of the United States to exempt from the payment of tolls its vessels of war and other vessels engaged in the service of this Government. Great Britain does not challenge the right of the United States to protect the canal. United States vessels of war and those employed in government service are a part of our protective system. By the Hay-Pauncefote Treaty we assume the sole responsibility for its neutralization. It is inconceivable that this Government should be required to pay canal tolls for the vessels used for protecting the canal, which we alone must protect. The movement of United States vessels in executing governmental policies of protection are not susceptible of explanation or differentiation. The United States could not be called upon to explain what relation the movement of a particular vessel through the canal has to its protection. The British objection, therefore, is understood as having no relation to the use of the canal by vessels in the service of the United States Government.

Regarding the first objection, the question presented by Sir

Edward Grey arises solely upon the exemption in the Canal Act of vessels engaged in our coastwise trade.

On this point Sir Edward Grey says that "His Majesty's Government do not question the right of the United States to grant subsidies to United States shipping generally, or to any particular branches of that shipping," and it is admitted in his note that the exemption of certain classes of ships would be "a form of subsidy" to those vessels; but it appears from the note that His Majesty's Government would regard that form of subsidy as objectionable under the treaty if the effect of such subsidy would be "to impose upon British or other foreign shipping an unfair share of the burden of the upkeep of the Canal, or to create a discrimination in respect of the conditions or charges of traffic, or otherwise to prejudice rights secured to British shipping by this Treaty."

It is not contended by Great Britain that equality of treatment has any reference to British participation in the coastwise trade of the United States, which, in accordance with general usage, is reserved to American ships. The objection is only to such exemption of that trade from toll payments as may adversely affect British rights to equal treatment in the payment of tolls, or to just and equitable tolls. It will be helpful here to recall that we are now only engaged in considering (quoting from Sir Edward Grey's note) "whether the Panama Canal Act in its present form conflicts with the treaty rights to which His Majesty's Government maintain they are entitled," concerning which he concludes:

> *These provisions* (1) clearly conflict with the rule embodied in the principle established in article 8 of the Clayton-Bulwer Treaty of equal treatment for British and United States ships, and (2) *would enable* tolls to be fixed which would not be just and equitable, and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote Treaty.

On the first of these points the objection of the British Government to the exemption of vessels engaged in the coastwise trade of the United States is stated as follows:

* * * the exemption will, in the opinion of His Majesty's Government, be a violation of the equal treatment secured by the treaty, as it will put the "coastwise trade" in a preferential position as regards other shipping. Coastwise trade cannot be circumscribed so completely that benefits conferred upon it will not affect vessels engaged in the foreign trade. To take an example, if cargo intended for an United States port beyond the Canal, either from east or west, and shipped on board a foreign ship could be sent to its destination more cheaply, through the operation of proposed exemption, by being landed at an United States port before reaching the Canal, and then sent on as coastwise trade, shippers would benefit by adopting this course in preference to sending the goods direct to their destination through the Canal on board the foreign ship.

This objection must be read in connection with the views expressed by the British Government while this Act was pending in Congress, which were stated in the note of July 8, 1912, on the subject from Mr. Innes as follows:

As to the proposal that exemption shall be given to vessels engaged in the coastwise trade, a more difficult question arises. If the trade should be so regulated as to make it certain that only bona-fide coastwise traffic which is reserved for United States vessels would be benefited by this exemption, it may be that no objection could be taken.

This statement may fairly be taken as an admission that this Government may exempt its vessels engaged in the coastwise trade from the payment of tolls, provided such exemption be restricted to bona fide coastwise traffic. As to this it is sufficient to say that obviously the United States is not to be denied the power to remit tolls to its own coastwise trade because of a suspicion or possibility that the regulations yet to be framed may not restrict this exemption to bona fide coastwise traffic.

The answer to this objection, therefore, apart from any question of treaty interpretation, is that it rests on conjecture as to what may happen rather than upon proved facts, and does not present a question requiring submission to arbitration as it has not as yet passed beyond the stage where it can be profitably dealt with by diplomatic discussion. It will be

remembered that only questions which it may not be possible to settle by diplomacy are required by our arbitration treaty to be referred to arbitration.

On this same point Sir Edward Grey urges another objection to the exemption of coastwise vessels as follows:

> Again, although certain privileges are granted to vessels engaged in an exclusively coastwise trade, His Majesty's Government are given to understand that there is nothing in the laws of the United States which prevents any United States ship from combining foreign commerce with coastwise trade, and consequently from entering into direct competition with foreign vessels while remaining "prima facie" entitled to the privilege of free passage through the Canal. Moreover any restriction which may be deemed to be now applicable might at any time be removed by legislation or even perhaps by mere changes in the regulations.

This objection also raises a question which, apart from treaty interpretation, depends upon future conditions and facts not yet ascertained, and for the same reasons as are above stated its submission to arbitration at this time would be premature.

The second point of Sir Edward Grey's objection to the exemption of vessels engaged in coastwise trade remains to be considered. On this point he says that the provisions of the Act "*would enable* tolls to be fixed which would not be just and equitable, and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote Treaty."

It will be observed that this statement evidently was framed without knowledge of the fact that the President's proclamation fixing the tolls had issued. It is not claimed in the note that the tolls actually fixed are not "just and equitable" or even that all vessels passing through the canal were not taken into account in fixing the amount of the tolls, but only that either or both contingencies are possible.

If the British contention is correct that the true construction of the treaty requires all traffic to be reckoned in fixing just and equitable tolls, it requires at least an allegation that the tolls as fixed are not just and equitable and that all traffic has

not been reckoned in fixing them before the United States can be called upon to prove that this course was not followed, even assuming that the burden of proof would rest with the United States in any event, which is open to question. This Government welcomes the opportunity, however, of informing the British Government that the tolls fixed in the President's proclamation are based upon the computations set forth in the report of Professor Emory R. Johnson, a copy of which is forwarded herewith for delivery to Sir Edward Grey, and that the tolls which would be paid by American coastwise vessels, but for the exemption contained in the Act, were computed in determining the rate fixed by the President.

By reference to page 208 of Professor Johnson's report, it will be seen that the estimated net tonnage of shipping using the canal in 1915 is as follows:

Coast to coast American shipping.....	1,000,000 tons
American shipping carrying foreign commerce of the United States.....	720,000 tons
Foreign shipping carrying commerce of the United States and foreign countries.....	8,780,000 tons

It was on this estimate that tolls fixed in the President's proclamation were based.

Sir Edward Grey says, "This rule [1 of article 3 of the Hay-Pauncefote Treaty] also provides that the tolls should be 'just and equitable.'" The purpose of these words, he adds, "was to limit the tolls to the amount representing the fair value of the services rendered, i. e., to the interest on the capital expended and the cost of the operation and maintenance of the Canal." If, as a matter of fact, the tolls now fixed (of which he seems unaware) do not exceed this requirement, and as heretofore pointed out there is no claim that they do, it is not apparent under Sir Edward Grey's contention how Great Britain could be receiving unjust and inequitable treatment if the United States favors its coastwise vessels by not collecting their share of the tolls necessary to meet the requirement. There is a very clear distinction between an omission

to "take into account" the coastwise tolls in order to determine a just and equitable rate, which is as far as this objection goes, and the remission of such tolls, or their collection coupled with their repayment in the form of a subsidy.

The exemption of the coastwise trade from tolls, or the refunding of tolls collected from the coastwise trade, is merely a subsidy granted by the United States to that trade, and the loss resulting from not collecting, or from refunding those tolls, will fall solely upon the United States. In the same way the loss will fall on the United States if the tolls fixed by the President's proclamation on all vessels represent less than the fair value of the service rendered, which must necessarily be the case for many years; and the United States will, therefore, be in the position of subsidizing or aiding not merely its own coastwise vessels, but foreign vessels as well.

Apart from the particular objections above considered, it is not understood that Sir Edward Grey questions the right of the United States to subsidize either its coastwise or its foreign shipping, inasmuch as he says that His Majesty's Government do not find "either in the letter or in the spirit of the Hay-Pauncefote Treaty any surrender by either of the contracting Powers of the right to encourage its shipping or its commerce by such subsidies as it may deem expedient."

To summarize the whole matter: The British objections are, in the first place, about the Canal Act only; but the Canal Act does not fix the tolls. They ignore the President's proclamation fixing the tolls which puts at rest practically all of the supposititious injustice and inequality which Sir Edward Grey thinks might follow the administration of the Act, and concerning which he expresses so many and grave fears. Moreover, the gravamen of the complaint is not that the Canal Act will actually injure in its operation British shipping or destroy rights claimed for such shipping under the Hay-Pauncefote Treaty, but that such injury or destruction may possibly be the effect thereof; and further, and more particularly, Sir Edward Grey complains that the action of Congress in

enacting the legislation under discussion foreshadows that Congress or the President may hereafter take some action which might be injurious to British shipping and destructive of its rights under the treaty. Concerning this possible future injury, it is only necessary to say that in the absence of an allegation of actual or certainly impending injury, there appears nothing upon which to base a sound complaint. Concerning the infringement of rights claimed by Great Britain, it may be remarked that it would, of course, be idle to contend that Congress has not the power, or that the President properly authorized by Congress, may not have the power to violate the terms of the Hay-Pauncefote Treaty, in its aspect as a rule of municipal law. Obviously, however, the fact that Congress has the power to do something contrary to the welfare of British shipping or that Congress has put or may put into the hands of the President the power to do something which may be contrary to the interests possessed by British shipping affords no just ground for complaint. It is the improper exercise of a power and not its possession which alone can give rise to an international cause of action; or to put it in terms of municipal law, it is not the possession of the power to trespass upon another's property which gives a right of action in trespass, but only the actual exercise of that power in committing the act of trespass itself.

When, and if, complaint is made by Great Britain that the effect of the Act and the proclamation together will be to subject British vessels as a matter of fact to inequality of treatment, or to unjust and inequitable tolls in conflict with the terms of the Hay-Pauncefote Treaty, the question will then be raised as to whether the United States is bound by that treaty both to take into account and to collect tolls from American vessels, and also whether under the obligations of that treaty British vessels are entitled to equality of treatment in all respects with the vessels of the United States. Until these objections rest upon something more substantial than mere possibility, it is not believed that they should be

submitted to arbitration. The existence of an arbitration treaty does not create a right of action; it merely provides a means of settlement to be resorted to only when other resources of diplomacy have failed. It is not now deemed necessary, therefore, to enter upon a discussion of the views entertained by Congress and by the President as to the meaning of the Hay-Pauncefote Treaty in relation to questions of fact which have not yet arisen, but may possibly arise in the future in connection with the administration of the Act under consideration.

It is recognized by this Government that the situation developed by the present discussion may require an examination by Great Britain into the facts above set forth as to the basis upon which the tolls fixed by the President's proclamation have been computed, and also into the regulations and restrictions circumscribing the coastwise trade of the United States, as well as into other facts bearing upon the situation, with the view of determining whether or not, as a matter of fact, under present conditions there is any ground for claiming that the Act and proclamation actually subject British vessels to inequality of treatment, or to unjust and inequitable tolls.

If it should be found as a result of such an examination on the part of Great Britain that a difference of opinion exists between the two Governments on any of the important questions of fact involved in this discussion, then a situation will have arisen, which, in the opinion of this Government, could with advantage be dealt with by referring the controversy to a Commission of Inquiry for examination and report, in the manner provided for in the unratified arbitration treaty of August 3, 1911, between the United States and Great Britain.

The necessity for inquiring into questions of fact in their relation to controversies under diplomatic discussion was contemplated by both Parties in negotiating that treaty, which provides for the institution, as occasion arises, of a Joint

High Commission of Inquiry, to which, upon the request of either Party, might be referred for impartial and conscientious investigation any controversy between them, the Commission being authorized upon such reference "to examine into and report upon the particular questions or matters referred to it, for the purpose of facilitating the solution of disputes by elucidating the facts, and to define the issues presented by such questions, and also to include in its report such recommendations and conclusions as may be appropriate."

This proposal might be carried out, should occasion arise for adopting it, either under a special agreement, or under the unratified arbitration treaty above mentioned, if Great Britain is prepared to join in ratifying that treaty, which the United States is prepared to do.

You will take an early opportunity to read this dispatch to Sir Edward Grey; and if he should so desire, you will leave a copy of it with him.

I am, Sir,

Your odebient servant,

P. C. Knox.

PRESIDENT TAFT'S MEMORANDUM TO ACCOMPANY THE PANAMA CANAL ACT

In signing the Panama Canal bill, I wish to leave this memorandum. The bill is admirably drawn for the purpose of securing the proper maintenance, operation, and control of the canal, and the government of the Canal Zone, and for the furnishing to all the patrons of the canal, through the Government, of the requisite docking facilities and the supply of coal and other shipping necessities. It is absolutely necessary to have the bill passed at this session in order that the capital of the world engaged in the preparation of ships to use the canal may know in advance the conditions under which the traffic is to be carried on through this waterway.

I wish to consider the objections to the bill in the order of their importance.

First. The bill is objected to because it is said to violate the Hay-Pauncefote Treaty in discriminating in favor of the coastwise trade of the United States by providing that no tolls shall be charged to vessels engaged in that trade passing through the canal. This is the subject of a protest by the British Government.

The British protest involves the right of the Congress of the United States to regulate its domestic and foreign commerce in such manner as to the Congress may seem wise, and specifically the protest challenges the right of the Congress to exempt American shipping from the payment of tolls for the use of the Panama Canal or to refund to such American ships the tolls which they may have paid, and this without regard to the trade in which such ships are employed, whether coastwise or foreign. The protest states "the proposal to exempt all American shipping from the payment of the tolls would, in the opinion of His Majesty's Government, involve an infraction of the treaty (Hay-Pauncefote), nor is there, in their opinion, any difference in principle between charging tolls only to refund them and remitting tolls altogether. The result is the same in either case and the adoption of the alternative method of refunding tolls in preference of remitting them, while perhaps complying with the letter of the treaty, would still controvert its spirit." The provision of the Hay-Pauncefote Treaty involved is contained in article 3, which provides:

> The United States adopts, as the basis of the neutralization of such ship canal, the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal—that is to say:
>
> 1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

Then follows five other rules to be observed by other nations

to make neutralization effective, the observance of which is the condition for the privilege of using the canal.

In view of the fact that the Panama Canal is being constructed by the United States wholly at its own cost, upon territory ceded to it by the Republic of Panama for that purpose, and that, unless it has restricted itself, the United States enjoys absolute rights of ownership and control, including the right to allow its own commerce the use of the canal upon such terms as it sees fit, the sole question is, Has the United States, in the language above quoted from the Hay-Pauncefote Treaty, deprived itself of the exercise of the right to pass its own commerce free or to remit tolls collected for the use of the Canal?

It will be observed that the rules specified in article 3 of the treaty were adopted by the United States for a specific purpose, namely, as the basis of the neutralization of the canal, and for no other purpose. The article is a declaration of policy by the United States that the canal shall be neutral; that the attitude of this Government toward the commerce of the world is that all nations will be treated alike and no discrimination made by the United States against any one of them observing the rules adopted by the United States. The right to the use of the canal and to equality of treatment in the use depends upon the observance of the conditions of the use by the nations to whom we extended that privilege. The privileges of all nations to whom we extended the use upon the observance of these conditions were to be equal to that extended to any one of them which observed the conditions. In other words, it was a conditional favored-nation treatment, the measure of which, in the absence of express stipulation to that effect, is not what the country gives to its own nationals, but the treatment it extends to other nations.

Thus it is seen that the rules are but a basis of neutralization, intended to effect the neutrality which the United States was willing should be the character of the canal and not intended to limit or hamper the United States in the exercise of

its sovereign power to deal with its own commerce, using its own canal in whatsoever manner it saw fit.

If there is no "difference in principle between the United States charging tolls to its own shipping only to refund them and remitting tolls altogether," as the British protest declares, then the irresistible conclusion is that the United States, although it owns, controls, and has paid for the canal, is restricted by treaty from aiding its own commerce in the way that all the other nations of the world may freely do. It would scarcely be claimed that the setting out in a treaty between the United States and Great Britain of certain rules adopted by the United States as the basis of the neutralization of the canal would bind any Government to do or refrain from doing anything other than the things required by the rules to insure the privilege of use and freedom from discrimination. Since the rules do not provide as a condition for the privilege of use upon equal terms with other nations that other nations desiring to build up a particular trade involving the use of the canal shall not either directly agree to pay the tolls or to refund to its ships the tolls collected for the use of the canal, it is evident that the treaty does not affect that inherent, sovereign right, unless, which is not likely, it be claimed that the promulgation by the United States of these rules insuring all nations against its discrimination, would authorize the United States to pass upon the action of other nations and require that no one of them should grant to its shipping larger subsidies or more liberal inducement for the use of the canal than were granted by others; in other words, that the United States has the power to equalize the practice of other nations in this regard.

If it is correct, then, to assume that there is nothing in the Hay-Pauncefote Treaty preventing Great Britain and the other nations from extending such favors as they may see fit to their shipping using the canal, and doing it in the way they see fit, and if it is also right to assume that there is nothing in the treaty that gives the United States any supervision

over, or right to complain of, such action, then the British protest leads to the absurd conclusion that this Government in constructing the canal, maintaining the canal, and defending the canal, finds itself shorn of its right to deal with its own commerce in its own way, while all other nations using the canal in competition with American commerce enjoy that right and power unimpaired.

The British protest, therefore, is a proposal to read into the treaty a surrender by the United States of its right to regulate its own commerce in its own way and by its own methods—a right which neither Great Britain herself, nor any other nation that may use the canal, has surrendered or proposes to surrender. The surrender of this right is not claimed to be in terms. It is only to be inferred from the fact that the United States has conditionally granted to all the nations the use of the canal without discrimination by the United States between the grantees; but as the treaty leaves all nations desiring to use the canal with full right to deal with their own vessels as they see fit, the United States would only be discriminating against itself if it were to recognize the soundness of the British contention.

The bill here in question does not positively do more than to discriminate in favor of the coastwise trade, and the British protest seems to recognize a distinction between such exemption and the exemption of American vessels engaged in foreign trade. In effect, of course, there is a substantial and practical difference. The American vessels in foreign trade come into competition with vessels of other nations in that same trade, while foreign vessels are forbidden to engage in the American coastwise trade. While the bill here in question seems to vest the President with discretion to discriminate in fixing tolls in favor of American ships and against foreign ships engaged in foreign trade, within the limitation of the range from 50 cents a ton to $1.25 a net ton, there is nothing in the act to compel the President to make such a discrimination. It is not, therefore, necessary to discuss the policy of such discrimination

until the question may arise in the exercise of the President's discretion.

The policy of exempting the coastwise trade from all tolls really involves the question of granting a Government subsidy for the purpose of encouraging that trade in competition with the trade of the transcontinental railroads. I approve this policy. It is in accord with the historical course of the Government in giving Government aid to the construction of the transcontinental roads. It is now merely giving Government aid to a means of transportation that competes with those transcontinental roads.

Second. The bill permits the registry of foreign-built vessels as vessels of the United States for foreign trade, and it also permits the admission without duty of materials for the construction and repair of vessels in the United States. This is objected to on the ground that it will interfere with the shipbuilding interests of the United States. I can not concur in this view. The number of vessels of the United States engaged in foreign trade is so small that the work done by the present shipyards is almost wholly that of constructing vessels for the coastwise trade or Government vessels. In other words, there is substantially no business for building ships in the foreign trade in the shipyards of the United States which will be injured by this new provision. It is hoped that this registry of foreign-built ships in American foreign trades will prove to be a method of increasing our foreign shipping. The experiment will hurt no interest of ours, and we can observe its operation. If it proves to extend our commercial flag to the high seas, it will supply a long-felt want.

Third. Section 5 of the interstate commerce act is amended by forbidding railroad companies to own, lease, operate, control, or have any interest in any common carrier by water operated through the Panama Canal with which such railroad or other carrier does or may compete for traffic. I have twice recommended such restriction as to the Panama Canal. It was urged upon me that the Interstate Commerce Com-

mission might control the trade so as to prevent an abuse from the joint ownership of railroads and of Panama steamships competing with each other, and therefore that this radical provision was not necessary. Conference with the Interstate Commerce Commission, however, satisfied me that such control would not be as effective as this restriction. The difficulty is that the interest of the railroad company is so much larger in its railroad and in the maintenance of its railroad rates than in making a profit out of the steamship line that it can afford temporarily to run its vessels for nearly nothing in order to drive out of the business independent steamship lines, and thus obtain complete control of the shipping in the trade through the canal and regulate the rates according to the interest of the railroad company. Jurisdiction is conferred on the Interstate Commerce Commission finally to determine the question of fact as to the competition or possibility of competition of the water carrier with the railroad, and this may be done in advance of any investment of capital.

Fourth. The effect of the amendment of section 5 of the interstate-commerce act also is extended so as to make it unlawful for railroad companies owning or controlling lines of steamships in any other part of the jurisdiction of the United States to continue to do so, and as to such railroad companies and such water carriers the Interstate Commerce Commission is given the duty and power not only finally to determine the question of competition or possibility of competition, but also to determine "that the specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration"; and, if it finds this to be the case, to extend the time during which such service by water may continue beyond the date fixed in the act for its first operation—to wit, July 1, 1914. Whenever the time is extended, then the water carrier, its rates

and schedules, and practices are brought within the control of the Interstate Commerce Commission. How far it is within the power of Congress to delegate to the Interstate Commerce Commission such wide discretion it is unnecessary now to discuss. There is ample time between now and the time of this provision of the act's going into effect to have the matter examined by the Supreme Court, or to change the form of the legislation, should it be deemed necessary. Certainly the suggested invalidity of this section, if true, would not invalidate the entire act, the remainder of which may well stand without regard to this provision.

Fifth. The final objection is to a provision which prevents the owner of any steamship who is guilty of violating the antitrust law from using the canal. It is quite evident that this section applies only to those vessels engaged in the trade in which there is a monopoly contrary to our Federal statute, and it is a mere injunctive process against the continuance of such monopolistic trade. It adds the penalty of denying the use of the canal to a person or corporation violating the antitrust law. It may have some practical operation where the business monopolized is transportation by ships, but it does not become operative to prevent the use of the canal until the decree of the court shall have established the fact of the guilt of the owner of the vessel. While the penalties of the antitrust law seem to me to be quite sufficient already, I do not know that this new remedy against a particular kind of a trust may not sometimes prove useful.

In a message sent to Congress after this bill had passed both Houses I ventured to suggest a possible amendment by which all persons, and especially all British subjects who felt aggrieved by the provisions of the bill on the ground that they are in violation of the Hay-Pauncefote Treaty, might try that question out in the Supreme Court of the United States. I think this would have satisfied those who oppose the view which Congress evidently entertains of the treaty and might avoid the necessity for either diplomatic negotia-

tion or further decision by an arbitral tribunal. Congress, however, has not thought it wise to accept the suggestion, and therefore I must proceed in the view which I have expressed, and am convinced is the correct one, as to the proper construction of the treaty and the limitations which it imposes upon the United States. I do not find that the bill here in question violates those limitations.

On the whole, I believe the bill to be one of the most beneficial that has passed this or any other Congress, and I find no reason in the objections made to the bill which should lead me to delay, until another session of Congress, provisions that are imperatively needed now in order that due preparation by the world may be made for the opening of the canal.

WM. H. TAFT.

THE WHITE HOUSE, *August 24, 1912.*

[Inclosure 3.]

[PANAMA CANAL TOLL RATES.]

By the President of the United States of America.

A PROCLAMATION.

I, WILLIAM HOWARD TAFT, President of the United States of America, by virtue of the power and authority vested in me by the Act of Congress, approved August twenty-fourth, nineteen hundred and twelve, to provide for the opening, maintenance, protection and operation of the Panama Canal and the sanitation and government of the Canal Zone, do hereby prescribe and proclaim the following rates of toll to be paid by vessels using the Panama Canal:

1. On merchant vessels carrying passengers or cargo one dollar and twenty cents ($1.20) per net vessel ton—each one hundred (100) cubic feet—of actual earning capacity.

2. On vessels in ballast without passengers or cargo forty (40) per cent. less than the rate of tolls for vessels with passengers or cargo.

3. Upon naval vessels, other than transports, colliers, hospital ships and supply ships, fifty (50) cents per displacement ton.

4. Upon army and navy transports, colliers, hospital ships and supply ships one dollar and twenty cents ($1.20) per net ton, the vessels to be measured by the same rules as are employed in determining the net tonnage of merchant vessels.

The Secretary of War will prepare and prescribe such rules for the measurement of vessels and such regulations as may be necessary and proper to carry this proclamation into full force and effect.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this thirteenth day of November in the year of our Lord one thousand nine hundred and twelve and of the independence of the United States the one hundred and thirty-seventh.

[SEAL.]

WM. H. TAFT.

By the President:
P. C. KNOX,
Secretary of State.

SPEECH OF HON. ELIHU ROOT

OF NEW YORK

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1913

PANAMA CANAL TOLLS

Mr. President, in the late days of last summer, after nearly nine months of continuous session, Congress enacted, in the bill to provide for the administration of the Panama Canal, a provision making a discrimination between the tolls to be charged upon foreign vessels and the tolls to be charged upon American vessels engaged in coastwise trade. We all must realize, as we look back, that when that provision was adopted the Members of both Houses were much exhausted; our minds

were not working with their full vigor; we were weary physically and mentally. Such discussion as there was was to empty seats. In neither House of Congress, during the period that this provision was under discussion, could there be found more than a scant dozen or two of Members. The provision has been the cause of great regret to a multitude of our fellow citizens, whose good opinion we all desire and whose leadership of opinion in the country makes their approval of the course of our Congress an important element in maintaining that confidence in government which is so essential to its success. The provision has caused a painful impression throughout the world that the United States has departed from its often-announced rule of equality of opportunity in the use of the Panama Canal, and is seeking a special advantage for itself in what is believed to be a violation of the obligations of a treaty. Mr. President, that opinion of the civilized world is something which we may not lightly disregard. "A decent respect to the opinions of mankind" was one of the motives stated for the people of these colonies in the great Declaration of American Independence.

The effect of the provision has thus been doubly unfortunate, and I ask the Senate to listen to me while I endeavor to state the situation in which we find ourselves; to state the case which is made against the action that we have taken, in order that I may present to the Senate the question whether we should not either submit to an impartial tribunal the question whether we are right; so that if we are right, we may be vindicated in the eyes of all the world, or whether we should not, by a repeal of the provision, retire from the position which we have taken.

In the year 1850, Mr. President, there were two great powers in possession of the North American Continent to the north of the Rio Grande. The United States had but just come to its full stature. By the Webster-Ashburton treaty of 1842 our northeastern boundary had been settled, leaving to Great Britain that tremendous stretch of seacoast including Nova Scotia,

New Brunswick, Newfoundland, Labrador, and the shores of the Gulf of St. Lawrence, now forming the Province of Quebec. In 1846 the Oregon boundary had been settled, assuring to the United States a title to that vast region which now constitutes the States of Washington, Oregon, and Idaho. In 1848 the treaty of Guadalupe-Hidalgo had given to us that great empire wrested from Mexico as a result of the Mexican War, which now spreads along the coast of the Pacific as the State of California and the great region between California and Texas.

Inspired by the manifest requirements of this new empire, the United States turned its attention to the possibility of realizing the dream of centuries and connecting its two coasts —its old coast upon the Atlantic and its new coast upon the Pacific—by a ship canal through the Isthmus; but when it turned its attention in that direction it found the other empire holding the place of vantage. Great Britain had also her coast upon the Atlantic and her coast upon the Pacific, to be joined by a canal. Further than that, Great Britain was a Caribbean power. She had Bermuda and the Bahamas; she had Jamaica and Trinidad; she had the Windward Islands and the Leeward Islands; she had British Guiana and British Honduras; she had, moreover, a protectorate over the Mosquito coast, a great stretch of territory upon the eastern shore of Central America which included the river San Juan and the valley and harbor of San Juan de Nicaragua, or Greytown. All men's minds then were concentrated upon the Nicaragua Canal route, as they were until after the treaty of 1901 was made.

And thus when the United States turned its attention toward joining these two coasts by a canal through the Isthmus it found Great Britain in possession of the eastern end of the route which men generally believed would be the most available route for the canal. Accordingly, the United States sought a treaty with Great Britain by which Great Britain should renounce the advantage which she had and admit the

United States to equal participation with her in the control and the protection of a canal across the Isthmus. From that came the Clayton-Bulwer treaty.

Let me repeat that this treaty was sought not by England but by the United States. Mr. Clayton, who was Secretary of State at the time, sent our minister to France, Mr. Rives, to London for the purpose of urging upon Lord Palmerston the making of the treaty. The treaty was made by Great Britain as a concession to the urgent demands of the United States.

I should have said, in speaking about the urgency with which the United States sought the Clayton-Bulwer treaty, that there were two treaties made with Nicaragua, one by Mr. Heis and one by Mr. Squire, both representatives of the United States. Each gave, so far as Nicaragua could, great powers to the United States in regard to the construction of a canal, but they were made without authorization from the United States, and they were not approved by the Government of the United States and were never sent to the Senate. Mr. Clayton, however, held those treaties in abeyance as a means of inducing Great Britain to enter into the Clayton-Bulwer treaty. He held them practically as a whip over the British negotiators, and having accomplished the purpose they were thrown into the waste basket.

By that treaty Great Britain agreed with the United States that neither Government should "ever obtain or maintain for itself any exclusive control over the ship canal"; that neither would "make use of any protection" which either afforded to a canal "or any alliance which either" might have "with any State or people for the purpose of erecting or maintaining any fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same," and that neither would "take advantage of any intimacy, or use any alliance, connection, or influence that either" might "possess

with any State or Government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or subjects of the other."

You will observe, Mr. President, that under these provisions the United States gave up nothing that it then had. Its obligations were entirely looking to the future; and Great Britain gave up its rights under the protectorate over the Mosquito coast, gave up its rights to what was supposed to be the eastern terminus of the canal. And, let me say without recurring to it again, under this treaty, after much discussion which ensued as to the meaning of its terms, Great Britain did surrender her rights to the Mosquito coast, so that the position of the United States and Great Britain became a position of absolute equality. Under this treaty also both parties agreed that each should "enter into treaty stipulations with such of the Central American States as they" might "deem advisable for the purpose"—I now quote the words of the treaty—"for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same."

That declaration, Mr. President, is the cornerstone of the rights of the United States upon the Isthmus of Panama, rights having their origin in a solemn declaration that there should be constructed and maintained a ship canal "between the two oceans for the benefit of mankind, on equal terms to all."

In the eighth article of that treaty the parties agreed:

> The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they

hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

There, Mr. President, is the explicit agreement for equality of treatment to the citizens of the United States and to the citizens of Great Britain in any canal, wherever it may be constructed, across the Isthmus. That was the fundamental principle embodied in the treaty of 1850. And we are not without an authoritative construction as to the scope and requirements of an agreement of that description, because we have another treaty with Great Britain—a treaty which formed one of the great landmarks in the diplomatic history of the world, and one of the great steps in the progress of civilization—the treaty of Washington of 1871, under which the Alabama claims were submitted to arbitration. Under that treaty there were provisions for the use of the American canals along the waterway of the Great Lakes, and the Canadian canals along the same line of communication, upon equal terms to the citizens of the two countries.

Some years after the treaty, Canada undertook to do something quite similar to what we have undertaken to do in this law about the Panama Canal. It provided that while nominally a toll of 20 cents a ton should be charged upon the merchandise both of Canada and of the United States there should be a rebate of 18 cents for all merchandise which went to Montreal or beyond, leaving a toll of but 2 cents a ton for

that merchandise. The United States objected; and I beg your indulgence while I read from the message of President Cleveland upon that subject, sent to the Congress August 23, 1888. He says:

> By article 27 of the treaty of 1871 provision was made to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion of Canadà on terms of equality with the inhabitants of the Dominion, and to also secure to the subjects of Great Britain the use of the St. Clair Flats Canal on terms of equality with the inhabitants of the United States.
>
> The equality with the inhabitants of the Dominion which we were promised in the use of the canals of Canada did not secure to us freedom from tolls in their navigation, but we had a right to expect that we, being Americans and interested in American commerce, would be no more burdened in regard to the same than Canadians engaged in their own trade; and the whole spirit of the concession made was, or should have been, that merchandise and property transported to an American market through these canals should not be enhanced in its cost by tolls many times higher than such as were carried to an adjoining Canadian market. All our citizens, producers and consumers as well as vessel owners, were to enjoy the equality promised.
>
> And yet evidence has for some time been before the Congress, furnished by the Secretary of the Treasury, showing that while the tolls charged in the first instance are the same to all, such vessels and cargoes as are destined to certain Canadian ports—
>
> Their coastwise trade—
>
> are allowed a refund of nearly the entire tolls, while those bound for American ports are not allowed any such advantage.
>
> To promise equality and then in practice make it conditional upon our vessels doing Canadian business instead of their own, is to fulfill a promise with the shadow of performance.

Upon the representations of the United States embodying that view, Canada retired from the position which she had taken, rescinded the provision for differential tolls, and put American trade going to American markets on the same basis of tolls as Canadian trade going to Canadian markets. She did not base her action upon any idea that there was no competition between trade to American ports and trade to Ca-

nadian ports, but she recognized the law of equality in good faith and honor; and to this day that law is being accorded to us and by each great nation to the other.

I have said, Mr. President, that the Clayton-Bulwer treaty was sought by us. In seeking it we declared to Great Britain what it was that we sought. I ask the Senate to listen to the declaration that we made to induce Great Britain to enter into that treaty—to listen to it because it is the declaration by which we are in honor bound as truly as if it were signed and sealed.

Here I will read from the report made to the Senate on the 5th day of April, 1900, by Senator Cushman K. Davis, then chairman of the Committee on Foreign Relations. So you will perceive that this is no new matter to the Senate of the United States and that I am not proceeding upon my own authority in thinking it worthy of your attention.

Mr. Rives was instructed to say and did say to Lord Palmerston, in urging upon him the making of the Clayton-Bulwer treaty, this:

> The United States sought no exclusive privilege or preferential right of any kind in regard to the proposed communication, and their sincere wish, if it should be found practicable, was to see it dedicated to the common use of all nations on the most liberal terms and a footing of perfect equality for all.
>
> That the United States would not, if they could, obtain any exclusive right or privilege in a great highway which naturally belonged to all mankind.

That, sir, was the spirit of the Clayton-Bulwer convention. That was what the United States asked Great Britain to agree upon. That self-denying declaration underlaid and permeated and found expression in the terms of the Clayton-Bulwer convention. And upon that representation Great Britain in that convention relinquished her coign of vantage which she herself had for the benefit of her great North American empire for the control of the canal across the Isthmus.

Mr. CUMMINS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from Iowa?

Mr. ROOT. I do, but—

Mr. CUMMINS. I will ask the Senator from New York whether he prefers that there shall be no interruptions? If he does, I shall not ask any question.

Mr. ROOT. Mr. President, I should prefer it, because what I have to say involves establishing the relation between a considerable number of acts and instruments, and interruptions naturally would destroy the continuity of my statement.

Mr. CUMMINS. The question I was about to ask was purely a historic one.

Mr. ROOT. I shall be very glad to answer the Senator.

Mr. CUMMINS. The Senator has stated that at the time of the Clayton-Bulwer treaty we were excluded from the Mosquito coast by the protectorate exercised by Great Britain over that coast. My question is this: Had we not at that time a treaty with New Granada that gave us equal or greater rights upon the Isthmus of Panama than were claimed even by Great Britain over the Mosquito coast?

Mr. ROOT. Mr. President, we had the treaty of 1846 with New Granada, under which we undertook to protect any railway or canal across the Isthmus. But that did not apply to the Nicaragua route, which was then supposed to be the most available route for a canal.

Mr. CUMMINS. I quite agree with the Senator about that. I only wanted it to appear in the course of the argument that we were then under no disability so far as concerned building a canal across the Isthmus of Panama.

Mr. ROOT. We were under a disability so far as concerned building a canal by the Nicaragua route, which was regarded as the available route until the discussion in the Senate after 1901, in which Senator Spooner and Senator Hanna practically changed the judgment of the Senate with regard to what was the proper route to take. And in the treaty of

1850, so anxious were we to secure freedom from the claims of Great Britain on the eastern end of the Nicaragua route that, as I have read, we agreed that the same contract should apply not merely to the Nicaragua route but to the whole of the Isthmus. So that from that time on the whole Isthmus was impressed by the same obligations which were impressed upon the Nicaragua route, and whatever rights we had under our treaty of 1846 with New Granada we were thenceforth bound to exercise with due regard and subordination to the provisions of the Clayton-Bulwer treaty.

Mr. President, after the lapse of some 30 years, during the early part of which we were strenuously insisting upon the observance by Great Britain of her obligations under the Clayton-Bulwer treaty and during the latter part of which we were beginning to be restive under our obligations by reason of that treaty, we undertook to secure a modification of it from Great Britain. In the course of that undertaking there was much discussion and some difference of opinion as to the continued obligations of the treaty. But I think that was finally put at rest by the decision of Secretary Olney in the memorandum upon the subject made by him in the year 1896. In that memorandum he said:

> Under these circumstances, upon every principle which governs the relation to each other, either of nations or of individuals, the United States is completely estopped from denying that the treaty is in full force and vigor.
>
> If changed conditions now make stipulations, which were once deemed advantageous, either inapplicable or injurious, the true remedy is not in ingenious attempts to deny the existence of the treaty or to explain away its provisions, but in a direct and straightforward application to Great Britain for a reconsideration of the whole matter.

We did apply to Great Britain for a reconsideration of the whole matter, and the result of the application was the Hay-Pauncefote treaty. That treaty came before the Senate in two forms: First, in the form of an instrument signed on the

5th of February, 1900, which was amended by the Senate; and, second, in the form of an instrument signed on the 18th of November, 1901, which continued the greater part of the provisions of the earlier instrument, but somewhat modified or varied the amendments which had been made by the Senate to that earlier instrument.

It is really but one process by which the paper sent to the Senate in February, 1900, passed through a course of amendment; first, at the hands of the Senate, and then at the hands of the negotiators between Great Britain and the United States, with the subsequent approval of the Senate. In both the first form and the last of this treaty the preamble provides for preserving the provisions of article 8 of the Clayton-Bulwer Treaty. Both forms provide for the construction of the canal under the auspices of the United States alone instead of its construction under the auspices of both countries.

Both forms of that treaty provide that the canal might be—

> constructed under the auspices of the Government of the United States, either directly at its own cost or by gift or loan of money to individuals or corporations or through subscription to or purchase of stock or shares—

that being substituted for the provisions of the Clayton-Bulwer treaty under which both countries were to be patrons of the enterprise.

Under both forms it was further provided that—

> Subject to the provisions of the present convention, the said Government—
>
> The United States—
>
> shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

That provision, however, for the exclusive patronage of the

United States was subject to the initial provision that the modification or change from the Clayton-Bulwer treaty was to be for the construction of such canal under the auspices of the Government of the United States, without impairing the general principle of neutralization established in article 8 of that convention.

Then the treaty as it was finally agreed to provides that the United States "adopt, as the basis of such neutralization of such ship canal," the following rules, substantially as embodied in the convention "of Constantinople, signed the 29th of October, 1888," for the free navigation of the Suez Maritime Canal; that is to say:

First. The canal shall be free and open . . . to the vessels of commerce and of war of all nations "observing these rules on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect to the conditions or charges of traffic, or otherwise." Such conditions and charges of traffic shall be just and equitable.

Then follow rules relating to blockade and vessels of war, the embarkation and disembarkation of troops, and the extension of the provisions to the waters adjacent to the canal.

Now, Mr. President, that rule must, of course, be read in connection with the provision for the preservation of the principle of neutralization established in article 8 of the Clayton-Bulwer Convention.

Let me take your minds back again to article 8 of the Clayton-Bulwer convention, consistently with which we are bound to construe the rule established by the Hay-Pauncefote convention. The principle of neutralization provided for by the eighth article is neutralization upon terms of absolute equality both between the United States and Great Britain and between the United States and all other powers.

It is always understood—

Says the eighth article—

by the United States and Great Britain that the parties constructing or owning the same—

That is, the canal—

shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable, and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

Now, we are not at liberty to put any construction upon the Hay-Pauncefote Treaty which violates that controlling declaration of absolute equality between the citizens and subjects of Great Britain and the United States.

Mr. President, when the Hay-Pauncefote convention was ratified by the Senate it was in full view of this controlling principle, in accordance with which their act must be construed, for Senator Davis, in his report from the Committee on Foreign Relations, to which I have already referred—

Mr. McCumber. On the treaty in its form.

Mr. Root. Yes; the report on the treaty in its first form. Mr. Davis said, after referring to the Suez convention of 1888:

The United States can not take an attitude of opposition to the principles of the great act of October 22, 1888, without discrediting the official declarations of our Government for 50 years on the neutrality of an Isthmian canal and its equal use by all nations without discrimination.

To set up the selfish motive of gain by establishing a monopoly of a highway that must derive its income from the patronage of all maritime countries would be unworthy of the United States if we owned the country through which the canal is to be built.

But the location of the canal belongs to other governments, from whom we must obtain any right to construct a canal on their territory, and it is not unreasonable, if the question was new and was not involved in a subsisting treaty with Great Britain, that she should question the right of even Nicaragua and Costa Rica to

grant to our ships of commerce and of war extraordinary privileges of transit through the canal.

I shall revert to that principle declared by Senator Davis. I continue the quotation:

It is not reasonable to suppose that Nicaragua and Costa Rica would grant to the United States the exclusive control of a canal through those States on terms less generous to the other maritime nations than those prescribed in the great act of October 22, 1888, or if we could compel them to give us such advantages over other nations it would not be creditable to our country to accept them.

That our Government or our people will furnish the money to build the canal presents the single question whether it is profitable to do so. If the canal, as property, is worth more than its cost, we are not called on to divide the profits with other nations. If it is worth less and we are compelled by national necessities to build the canal, we have no right to call on other nations to make up the loss to us. In any view, it is a venture that we will enter upon if it is to our interest, and if it is otherwise we will withdraw from its further consideration.

The Suez Canal makes no discrimination in its tolls in favor of its stockholders, and, taking its profits or the half of them as our basis of calculation, we will never find it necessary to differentiate our rates of toll in favor of our own people in order to secure a very great profit on the investment.

Mr. President, in view of that declaration of principle, in the face of that declaration, the United States can not afford to take a position at variance with the rule of universal equality established by the Suez Canal convention—equality as to every stockholder and all nonstockholders, equality as to every nation whether in possession or out of possession. In the face of that declaration the United States can not afford to take any other position than upon the rule of universal equality of the Suez Canal Convention, and upon the further declaration that the country owning the territory through which this canal was to be built would not and ought not to give any special advantage or preference to the United States as compared with all the other nations of the earth. In view of that report the Senate rejected the amendment which was

offered by Senator Bard, of California, providing for preference to the coastwise trade of the United States. This is the amendment which was proposed:

> The United States reserves the right in the regulation and management of the canal to discriminate in respect of the charges of traffic in favor of vessels of its own citizens engaged in the coastwise trade.

I say, the Senate rejected that amendment upon this report, which declared the rule of universal equality without any preference or discrimination in favor of the United States as being the meaning of the treaty and the necessary meaning of the treaty.

There was still more before the Senate, there was still more before the country to fix the meaning of the treaty. I have read the representations that were made, the solemn declarations made by the United States to Great Britain establishing the rule of absolute equality without discrimination in favor of the United States or its citizens to induce Great Britain to enter into the Clayton-Bulwer Treaty.

Now, let me read the declaration made to Great Britain to induce her to modify the Clayton-Bulwer treaty and give up her right to joint control of the canal and put in our hands the sole power to construct it or patronize it or control it.

Mr. Blaine said in his instructions to Mr. Lowell on June 24, 1881, directing Mr. Lowell to propose to Great Britain the modification of the Clayton-Bulwer Treaty:

I read his words:

> The United States recognizes a proper guarantee of neutrality as essential to the construction and successful operation of any highway across the Isthmus of Panama, and in the last generation every step was taken by this Government that is deemed requisite in the premises. The necessity was foreseen and abundantly provided for long in advance of any possible call for the actual exercise of power. * * * *Nor, in time of peace, does the United States seek to have any exclusive privileges accorded to American ships in respect to precedence or tolls through an interoceanic canal any more than it has sought like privileges for American goods in transit over the Panama Railway, under the exclusive control of*

an American corporation. The extent of the privileges of American citizens and ships is measurable under the treaty of 1846 by those of Colombian citizens and ships. *It would be our earnest desire and expectation to see the world's peaceful commerce enjoy the same just, liberal, and rational treatment.*

Secretary Cass had already said to Great Britain in 1857:

> The United States, as I have before had occasion to assure your Lordship, *demand no exclusive privileges in these passages,* but will always exert their influence *to secure their free and unrestricted benefits, both in peace and war, to the commerce of the world.*

Mr. President, it was upon that declaration, upon that self-denying declaration, upon that solemn assurance, that the United States sought not and would not have any preference for its own citizens over the subjects and citizens of other countries that Great Britain abandoned her rights under the Clayton-Bulwer Treaty and entered into the Hay-Pauncefote Treaty, with the clause continuing the principles of clause 8, which embodied these same declarations, and the clause establishing the rule of equality taken from the Suez Canal convention. We are not at liberty to give any other construction to the Hay-Pauncefote treaty than the construction which is consistent with that declaration.

Mr. President, these declarations, made specifically and directly to secure the making of these treaties, do not stand alone. For a longer period than the oldest Senator has lived the United States has been from time to time making open and public declarations of her disinterestedness, her altruism, her purposes for the benefit of mankind, her freedom from desire or willingness to secure special and peculiar advantage in respect of transit across the Isthmus. In 1826 Mr. Clay, then Secretary of State in the Cabinet of John Quincy Adams, said, in his instructions to the delegates to the Panama Congress of that year:

> If a canal across the Isthmus be opened "so as to admit of the passage of sea vessels from ocean to ocean, the benefit of it ought

not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation for reasonable tolls."

Mr. Cleveland, in his annual message of 1885, said:

The lapse of years has abundantly confirmed the wisdom and foresight of those earlier administrations which, long before the conditions of maritime intercourse were changed and enlarged by the progress of the age, proclaimed the vital need of interoceanic transit across the American Isthmus and consecrated it in advance to the common use of mankind by their positive declarations and through the formal obligations of treaties. Toward such realization the efforts of my administration will be applied, ever bearing in mind the principles on which it must rest and which were declared in no uncertain tones by Mr. Cass, who, while Secretary of State in 1858, announced that "What the United States want in Central America next to the happiness of its people is the security and neutrality of the interoceanic routes which lead through it."

By public declarations, by the solemn asseverations of our treaties with Colombia in 1846, with Great Britain in 1850, our treaties with Nicaragua, our treaty with Great Britain in 1901, our treaty with Panama in 1903, we have presented to the world the most unequivocal guaranty of disinterested action for the common benefit of mankind and not for our selfish advantage.

In the message which was sent to Congress by President Roosevelt on the 4th of January, 1904, explaining the course of this Government regarding the revolution in Panama and the making of the treaty by which we acquired all the title that we have upon the Isthmus, President Roosevelt said:

If ever a Government could be said to have received a mandate from civilization to effect an object the accomplishment of which was demanded in the interest of mankind, the United States holds that position with regard to the interoceanic canal.

Mr. President, there has been much discussion for many years among authorities upon international law as to whether artificial canals for the convenience of commerce did not partake of the character of natural passageways to such a degree that, by the rules of international law, equality must be ob-

served in the treatment of mankind by the nation which has possession and control. Many very high authorities have asserted that that rule applies to the Panama Canal even without a treaty. We base our title upon the right of mankind in the Isthmus, treaty or no treaty. We have long asserted, beginning with Secretary Cass, that the nations of Central America had no right to debar the world from its right of passage across the Isthmus. Upon that view, in the words which I have quoted from President Roosevelt's message to Congress, we base the justice of our entire action upon the Isthmus which resulted in our having the Canal Zone. We could not have taken it for our selfish interest; we could not have taken it for the purpose of securing an advantage to the people of the United States over the other peoples of the world; it was only because civilization had its rights to passage across the Isthmus and because we made ourselves the mandatory of civilization to assert those rights that we are entitled to be there at all. On the principles which underlie our action and upon all the declarations that we have made for more than half a century, as well as upon the express and positive stipulations of our treaties, we are forbidden to say we have taken the custody of the Canal Zone to give ourselves any right of preference over the other civilized nations of the world beyond those rights which go to the owner of a canal to have the tolls that are charged for passage.

Well, Mr. President, asserting that we were acting for the common benefit of mankind, willing to accept no preferential right of our own, just as we asserted it to secure the Clayton-Bulwer treaty, just as we asserted it to secure the Hay-Pauncefote treaty, when we had recognized the Republic of Panama, we made a treaty with her on the 18th of November, 1903. I ask your attention now to the provisions of that treaty. In that treaty both Panama and the United States recognize the fact that the United States was acting, not for its own special and selfish interest, but in the interest of mankind.

The suggestion has been made that we are relieved from the obligations of our treaties with Great Britain because the Canal Zone is our territory. It is said that, because it has become ours, we are entitled to build the canal on our own territory and do what we please with it. Nothing can be further from the fact. It is not our territory, except in trust. Article 2 of the treaty with Panama provides:

The Republic of Panama grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said canal—

And for no other purpose—

of the width of 10 miles extending to the distance of 5 miles on each side of the center line of the route of the canal to be constructed.

* * * * * * * * *

The Republic of Panama further grants to the United States in perpetuity the use, occupation, and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said enterprise.

Article 3 provides:

The Republic of Panama grants to the United States all the rights, power, and authority within the zone mentioned and described in article 2 of this agreement—

From which I have just read—

and within the limits of all auxiliary lands and waters mentioned and described in said article 2 which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority.

Article 5 provides:

The Republic of Panama grants to the United States in perpetu-

ity a monopoly for the construction, maintenance, and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

I now read from article 18:

The canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by section 1 of article 3 of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

So, Mr. President, far from our being relieved of the obligations of the treaty with Great Britain by reason of the title that we have obtained to the Canal Zone, we have taken that title impressed with a solemn trust. We have taken it for no purpose except the construction and maintenance of a canal in accordance with all the stipulations of our treaty with Great Britain. We can not be false to those stipulations without adding to the breach of contract a breach of the trust which we have assumed, according to our own declarations, for the benefit of mankind as the mandatory of civilization.

In anticipation of the plainly-to-be-foreseen contingency of our having to acquire some kind of title in order to construct the canal, the Hay-Pauncefote treaty provided expressly in article 4:

It is agreed that no change of territorial sovereignty or of international relations of the country or countries traversed by the beforementioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

So you will see that the treaty with Great Britain expressly provides that its obligations shall continue, no matter what title we get to the Canal Zone; and the treaty by which we get the title expressly impresses upon it as a trust the obligations of the treaty with Great Britain. How idle it is to say that because the Canal Zone is ours we can do with it what we please.

There is another suggestion made regarding the obligations of this treaty, and that is that matters relating to the coasting trade are matters of special domestic concern, and that nobody else has any right to say anything about them. We did not think so when we were dealing with the Canadian canals. But that may not be conclusive as to rights under this treaty. But examine it for a moment.

It is rather poverty of language than a genius for definition which leads us to call a voyage from New York to San Francisco, passing along countries thousands of miles away from our territory, "coasting trade," or to call a voyage from New York to Manila, on the other side of the world, "coasting trade." When we use the term "coasting trade" what we really mean is that under our navigation laws a voyage which begins and ends at an American port has certain privileges and immunities and rights, and it is necessarily in that sense that the term is used in this statute. It must be construed in accordance with our statutes.

Sir, I do not for a moment dispute that ordinary coasting trade is a special kind of trade that is entitled to be treated differently from trade to or from distant foreign points. It is ordinarily neighborhood trade, from port to port, by which the people of a country carry on their intercommunication, often by small vessels, poor vessels, carrying cargoes of slight value. It would be quite impracticable to impose upon trade of that kind the same kind of burdens which great ocean-going steamers, trading to the farthest parts of the earth, can well bear. We make that distinction. Indeed, Great Britain herself makes it, although Great Britain admits all the world to her coasting trade. But it is by quite a different basis of classification—that is, the statutory basis—that we call a voyage from the eastern coast of the United States to the Orient a coasting voyage, because it begins and ends in an American port.

This is a special, peculiar kind of trade which passes through the Panama Canal. You may call it "coasting

trade," but it is unlike any other coasting trade. It is special and peculiar to itself.

Grant that we are entitled to fix a different rate of tolls for that class of trade from that which would be fixed for other classes of trade. Ah, yes; but Great Britain has her coasting trade through the canal under the same definition, and Mexico has her coasting trade, and Germany has her coasting trade, and Colombia has her coasting trade, in the same sense that we have. You are not at liberty to discriminate in fixing tolls between a voyage from Portland, Me., to Portland, Oreg., by an American ship, and a voyage from Halifax to Victoria in a British ship, or a voyage from Vera Cruz to Acapulco in a Mexican ship, because when you do so you discriminate, not between coasting trade and other trade, but between American ships and British ships, Mexican ships, or Colombian ships. That is a violation of the rule of equality which we have solemnly adopted, and asserted and reasserted, and to which we are bound by every consideration of honor and good faith. Whatever this treaty means, it means for that kind of trade as well as for any other kind of trade.

The suggestion has been made, also, that we should not consider that the provision in this treaty about equality as to tolls really means what it says, because it is not to be supposed that the United States would give up the right to defend itself, to protect its own territory, to land its own troops, and to send through the canal as it pleases its own ships of war. That is disposed of by the considerations which were presented to the Senate in the Davis report, to which I have already referred, in regard to the Suez convention.

The Suez convention, from which these rules of the Hay-Pauncefote treaty were taken almost—though not quite—textually, contained other provisions which reserved to Turkey and to Egypt, as sovereigns of the territory through which the canal passed—Egypt as the sovereign and Turkey as the sovereign over Egypt—all of the rights that pertained to sov-

ereigns for the protection of their own territory. As when the Hay-Pauncefote treaty was made neither party to the treaty had any title to the region which would be traversed by the canal, no such clauses could be introduced. But, as was pointed out, the rules which were taken from the Suez Canal for the control of the canal management would necessarily be subject to these rights of sovereignty which were still to be secured from the countries owning the territory. That is recognized by the British Government in the note which has been sent to us and has been laid before the Senate, or is in the possession of the Senate, from the British foreign office.

In Sir Edward Grey's note of November 14, 1912, he says what I am about to read. This is an explicit disclaimer of any contention that the provisions of the Hay-Pauncefote treaty exclude us from the same rights of protection of territory which Nicaragua or Colombia or Panama would have had as sovereigns, and which we succeed to, pro tanto, by virtue of the Panama Canal treaty.

Sir Edward Grey says:

> I notice that in the course of the debate in the Senate on the Panama Canal bill the argument was used by one of the speakers that the third, fourth, and fifth rules embodied in article 3 of the treaty show that the words "all nations" can not include the United States, because, if the United States were at war, it is impossible to believe that it could be intended to be debarred by the treaty from using its own territory for revictualing its warships or landing troops.
>
> The same point may strike others who read nothing but the text of the Hay-Pauncefote treaty itself, and I think it is therefore worth while that I should briefly show that this argument is not well founded.

I read this not as an argument but because it is a formal, official disclaimer which is binding.

Sir Edward Grey proceeds:

> The Hay-Pauncefote treaty of 1901 aimed at carrying out the principle of the neutralization of the Panama Canal by subjecting it to the same régime as the Suez Canal. Rules 3, 4, and 5 of

article 3 of the treaty are taken almost textually from articles 4, 5, and 6 of the Suez Canal Convention of 1888. At the date of the signature of the Hay-Pauncefote treaty the territory on which the Isthmian Canal was to be constructed did not belong to the United States, consequently there was no need to insert in the draft treaty provisions corresponding to those in articles 10 and 13 of the Suez Canal Convention, which preserve the sovereign rights of Turkey and of Egypt, and stipulate that articles 4 and 5 shall not affect the right of Turkey, as the local sovereign, and of Egypt, within the measure of her autonomy, to take such measures as may be necessary for securing the defense of Egypt and the maintenance of public order, and, in the case of Turkey, the defense of her possessions on the Red Sea.

Now that the United States has become the practical sovereign of the canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection.

Mr. President, Great Britain has asserted the construction of the Hay-Pauncefote treaty of 1901, the arguments for which I have been stating to the Senate. I realize, sir, that I may be wrong. I have often been wrong. I realize that the gentlemen who have taken a different view regarding the meaning of this treaty may be right. I do not think so. But their ability and fairness of mind would make it idle for me not to entertain the possibility that they are right and I am wrong. Yet, Mr. President, the question whether they are right and I am wrong depends upon the interpretation of the treaty. It depends upon the interpretation of the treaty in the light of all the declarations that have been made by the parties to it, in the light of the nature of the subject matter with which it deals.

Gentlemen say the question of imposing tolls or not imposing tolls upon our coastwise commerce is a matter of our concern. Ah! we have made a treaty about it. If the interpretation of the treaty is as England claims, then it is not a matter of our concern; it is a matter of treaty rights and duties. But, sir, it is not a question as to our rights to remit tolls to our commerce. It is a question whether we can impose tolls upon British commerce when we have remitted them from our own. That is the question. Nobody disputes our right to allow our own ships to go through the canal without paying tolls. What is disputed is our right to charge tolls

against other ships when we do not charge them against our own. That is, pure and simple, a question of international right and duty, and depends upon the interpretation of the treaty.

Sir, we have another treaty, made between the United States and Great Britain on the 4th of April, 1908, in which the two nations have agreed as follows:

> Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two contracting parties and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention of the 29th of July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting States, and do not concern the interests of third parties.

Of course, the question of the rate of tolls on the Panama Canal does not affect any nation's vital interests. It does not affect the independence or the honor of either of these contracting States. We have a difference relating to the interpretation of this treaty, and that is all there is to it. We are bound, by this treaty of arbitration, not to stand with arrogant assertion upon our own Government's opinion as to the interpretation of the treaty, not to require that Great Britain shall suffer what she deems injustice by violation of the treaty, or else go to war. We are bound to say, "We keep the faith of our treaty of arbitration, and we will submit the question as to what this treaty means to an impartial tribunal of arbitration."

Mr. President, if we stand in the position of arrogant refusal to submit the questions arising upon the interpretation of this treaty to arbitration, we shall not only violate our solemn obligation, but we shall be false to all the principles that we have asserted to the world, and that we have urged upon mankind. We have been the apostle of arbitration. We have been urging it upon the other civilized nations. Presidents, Secretaries of State, ambassadors, and ministers—aye, Congresses, the Senate and the House, all branches of our

Government have committed the United States to the principle of arbitration irrevocably, unequivocally, and we have urged it in season and out of season on the rest of mankind.

Sir, I can not detain the Senate by more than beginning upon the expressions that have come from our Government upon this subject, but I will ask your indulgence while I call your attention to a few selected from the others.

On the 9th of June, 1874, the Senate Committee on Foreign Relations reported and the Senate adopted this resolution:

Resolved, That the United States having at heart the cause of peace everywhere, and hoping to help its permanent establishment between nations, hereby recommend the adoption of arbitration as a great and practical method for the determination of international difference, to be maintained sincerely and in good faith, so that war may cease to be regarded as a proper form of trial between nations.

On the 17th of June, 1874, the Committee on Foreign Affairs of the House adopted this resolution:

Whereas war is at all times destructive of the material interests of a people, demoralizing in its tendencies, and at variance with an enlightened public sentiment; and whereas *differences between nations should in the interests of humanity and fraternity be adjusted, if possible, by international arbitration:* Therefore,

Resolved, That the people of the United States being devoted to the policy of peace with all mankind, enjoining its blessings and hoping for its permanence and its universal adoption, hereby through their representatives in Congress recommend such arbitration as a rational substitute for war; and they further recommend to the treaty-making power of the Government to provide, if practicable, that hereafter in treaties made between the United States and foreign powers war shall not be declared by either of the contracting parties against the other until efforts shall have been made to adjust all alleged cause of difference by impartial arbitration.

On the same 17th of June, 1874, the Senate adopted this resolution:

Resolved, etc., That the President of the United States is hereby authorized and requested to negotiate with all civilized powers who may be willing to enter into such negotiations for the establishment of an international system whereby matters in dispute between

different Governments agreeing thereto may be adjusted by arbitration, and, if possible, without recourse to war.

On the 14th of June, 1888, and again on the 14th of February, 1890, the Senate and the House adopted a concurrent resolution in the words which I now read:

Resolved by the Senate (the House of Representatives concurring), That the President be, and is hereby, requested to invite, from time to time, as fit occasions may arise, negotiations with any Government with which the United States has, or may have, diplomatic relations, to the end that any differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency may be referred to arbitration and be peaceably adjusted by such means.

This was concurred in by the House on the 3d of April, 1890.

Mr. President, in pursuance of those declarations by both Houses of Congress the Presidents and the Secretaries of State and the diplomatic agents of the United States, doing their bounden duty, have been urging arbitration upon the people of the world. Our representatives in The Hague conference of 1899, and in The Hague conference of 1907, and in the Pan American conference in Washington, and in the Pan American conference in Mexico, and in the Pan American conference in Rio de Janeiro were instructed to urge and did urge and pledge the United States in the most unequivocal and urgent terms to support the principle of arbitration upon all questions capable of being submitted to a tribunal for a decision.

Under those instructions Mr. Hay addressed the people of the entire civilized world with the request to come into treaties of arbitration with the United States. Here was his letter. After quoting from the resolutions and from expressions by the President he said:

Moved by these views, the President has charged me to instruct you to ascertain whether the Government to which you are accredited, which he has reason to believe is equally desirous of advancing the principle of international arbitration, is willing to

conclude with the Government of the United States an arbitration treaty of like tenor to the arrangement concluded between France and Great Britain on October 14, 1903.

That was the origin of this treaty. The treaties made by Mr. Hay were not satisfactory to the Senate because of the question about the participation of the Senate in the make-up of the special agreement of submission. Mr. Hay's successor modified that on conference with the Committee on Foreign Relations of the Senate, and secured the assent of the other countries of the world to the treaty with that modification. We have made 25 of these treaties of arbitration, covering the greater part of the world, under the direction of the Senate of the United States and the House of Representatives of the United States and in accordance with the traditional policy of the United States, holding up to the world the principle of peaceful arbitration.

One of these treaties is here, and under it Great Britain is demanding that the question as to what the true interpretation of our treaty about the canal is shall be submitted to decision and not be made the subject of war or of submission to what she deems injustice to avoid war.

In response to the last resolution which I have read, the concurrent resolution passed by the Senate and the House requesting the President to enter into the negotiations which resulted in these treaties of arbitration, the British House of Commons passed a resolution accepting the overture. On the 16th of July, 1893, the House of Commons adopted this resolution:

Resolved, That this house has learnt with satisfaction that both Houses of the United States Congress have, by resolution, requested the President to invite from time to time, as fit occasions may arise, negotiations with any government with which the United States have or may have diplomatic relations, to the end that any differences or disputes arising between the two governments which can not be adjusted by diplomatic agency may be referred to arbitration and peaceably adjusted by such means, and that this house, cordially sympathizing with the purpose in view, expresses the hope that Her Majesty's Government will lend their

ready coöperation to the Government of the United States upon the basis of the foregoing resolution.

Her Majesty's Government did, and thence came this treaty.

Mr. President, what revolting hypocrisy we convict ourselves of, if after all this, the first time there comes up a question in which we have an interest, the first time there comes up a question of difference about the meaning of a treaty as to which we fear we may be beaten in an arbitration, we refuse to keep our agreement? Where will be our self-respect if we do that? Where will be that respect to which a great nation is entitled from the other nations of the earth?

I have read from what Congress has said.

Let me read something from President Grant's annual message of December 4, 1871. He is commenting upon the arbitration provisions of the treaty of 1871, in which Great Britain submitted to arbitration our claims against her, known as the Alabama claims, in which Great Britain submitted those claims, where she stood possibly to lose but not possibly to gain anything, and submitted them against the most earnest and violent protest of many of her own citizens. Gen. Grant said:

> The year has been an eventful one in witnessing two great nations speaking one language and having one lineage, settling by peaceful arbitration disputes of long standing and liable at any time to bring those nations into costly and bloody conflict. An example has been set which, if successful in its final issue, may be followed by other civilized nations and finally be the means of returning to productive industry millions of men now maintained to settle the disputes of nations by the bayonet and by broadside.

Under the authority of these resolutions our delegates in the first Pan American conference at Washington secured the adoption of this resolution April 18, 1890:

> Article 1. The Republics of North, Central, and South America hereby adopt arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them.

And this:

The International American Conference resolves that this conference, having recommended arbitration for the settlement of disputes among the Republics of America, begs leave to express the wish that controversies between them and the nations of Europe may be settled in the same friendly manner.

It is further recommended that the Government of each nation herein represented communicate this wish to all friendly powers.

Upon that Mr. Blaine, that most vigorous and virile American, in his address as the presiding officer of that first Pan American conference in Washington said:

If, in this closing hour, the conference had but one deed to celebrate we should dare call the world's attention to the deliberate, confident, solemn dedication of two great continents to peace and to the prosperity which has peace for its foundation. We hold up this new Magna Charta, which abolishes war and substitutes arbitration between the American Republics, as the first and great fruit of the International American Conference. That noblest of Americans, the aged poet and philanthropist, Whittier, is the first to send his salutation and his benediction, declaring, "If in the spirit of peace the American conference agrees upon a rule of arbitration which shall make war in this hemisphere well-nigh impossible, its sessions will prove one of the most important events in the history of the world."

President Arthur in his annual message of December 4, 1882, said, in discussing the proposition for a Pan American conference:

I am unwilling to dismiss this subject without assuring you of my support of any measure the wisdom of Congress may devise for the promotion of peace on this continent and throughout the world, and I trust the time is nigh when, with the universal assent of civilized peoples, all international differences shall be determined without resort to arms by the benignant processes of arbitration.

President Harrison in his message of December 3, 1889, said concerning the Pan American conference:

But while the commercial results which it is hoped will follow this conference are worthy of pursuit and of the great interests they have excited, it is believed that the crowning benefit will be found in the better securities which may be devised for the maintenance of peace among all American nations and the settlement of all contentions by methods that a Christian civilization can approve.

President Cleveland, in his message of December 4, 1893, said, concerning the resolution of the British Parliament of July 16, 1893, which I have already read, and commenting on the concurrent resolution of February 14 and April 18, 1890:

> It affords me signal pleasure to lay this parliamentary resolution before the Congress and to express my sincere gratification that the sentiment of two great kindred nations is thus authoritatively manifested in favor of the rational and peaceable settlement of international quarrels by honorable resort to arbitration.

President McKinley, in his message of December 6, 1897, said:

> International arbitration can not be omitted from the list of subjects claiming our consideration. Events have only served to strengthen the general views on this question expressed in my inaugural address. The best sentiment of the civilized world is moving toward the settlement of differences between nations without resorting to the horrors of war. Treaties embodying these humane principles on broad lines without in any way imperiling our interests or our honor shall have my constant encouragement.

President Roosevelt, in his message of December 3, 1905, said:

> I earnestly hope that the conference—

The second Hague conference—

> may be able to devise some way to make arbitration between nations the customary way of settling international disputes in all save a few classes of cases, which should themselves be sharply defined and rigidly limited as the present governmental and social development of the world will permit. If possible, there should be a general arbitration treaty negotiated among all nations represented at the conference.

Oh, Mr. President, are we Pharisees? Have we been insincere and false? Have we been pretending in all these long years of resolution and declaration and proposal and urgency for arbitration? Are we ready now to admit that our country, that its Congresses and its Presidents, have all been

guilty of false pretense, of humbug, of talking to the galleries, of fine words to secure applause, and that the instant we have an interest we are ready to falsify every declaration, every promise, and every principle? But we must do that if we arrogantly insist that we alone will determine upon the interpretation of this treaty and will refuse to abide by the agreement of our treaty of arbitration.

Mr. President, what is all this for? Is the game worth the candle? Is it worth while to put ourselves in a position and to remain in a position to maintain which we may be driven to repudiate our principles, our professions, and our agreements for the purpose of conferring a money benefit—not very great, not very important, but a money benefit—at the expense of the Treasury of the United States, upon the most highly and absolutely protected special industry in the United States? Is it worth while? We refuse to help our foreign shipping, which is in competition with the lower wages and the lower standard of living of foreign countries, and we are proposing to do this for a part of our coastwise shipping which has now by law the absolute protection of a statutory monopoly and which needs no help.

Mr. President, there is but one alternative consistent with self-respect. We must arbitrate the interpretation of this treaty or we must retire from the position we have taken.

O Senators, consider for a moment what it is that we are doing. We all love our country; we are all proud of its history; we are all full of hope and courage for its future; we love its good name; we desire for it that power among the nations of the earth which will enable it to accomplish still greater things for civilization than it has accomplished in its noble past. Shall we make ourselves in the minds of the world like unto the man who in his own community is marked as astute and cunning to get out of his obligations? Shall we make ourselves like unto the man who is known to be false to his agreements; false to his pledged word? Shall we have it understood the whole world over that "you must look out for

the United States or she will get the advantage of you"; that we are clever and cunning to get the better of the other party to an agreement, and that at the end—

Mr. BRANDEGEE. "Slippery" would be a better word.

Mr. ROOT. Yes; I thank the Senator for the suggestion—"slippery." Shall we in our generation add to those claims to honor and respect that our fathers have established for our country good cause that we shall be considered slippery?

It is worth while, Mr. President, to be a citizen of a great country, but size alone is not enough to make a country great. A country must be great in its ideals; it must be great-hearted; it must be noble; it must despise and reject all smallness and meanness; it must be faithful to its word; it must keep the faith of treaties; it must be faithful to its mission of civilization in order that it shall be truly great. It is because we believe that of our country that we are proud, aye, that the alien with the first step of his foot upon our soil is proud to be a part of this great democracy.

Let us put aside the idea of small, petty advantage; let us treat this situation and these obligations in our relation to this canal in that large way which befits a great nation.

Mr. President, how sad it would be if we were to dim the splendor of that great achievement by drawing across it the mark of petty selfishness; if we were to diminish and reduce for generations to come the power and influence of this free Republic for the uplifting and the progress of mankind by destroying the respect of mankind for us! How sad it would be if you and I, Senators, were to make ourselves responsible for destroying that bright and inspiring ideal which has enabled free America to lead the world in progress toward liberty and justice!

PLATFORM DECLARATIONS

DEMOCRATIC PLATFORM

We favor the exemption from tolls of American ships engaged in coastwise trade passing through the Panama Canal. We also favor legislation forbidding the use of the Panama Canal by ships owned or controlled by railroad carriers engaged in transportation competitive with the canal.

This platform also declared for upbuilding the marine by constitutional regulation of commerce without subsidies or bounties.

PROGRESSIVE PLATFORM

The Panama Canal, built and paid for by the American people must be used primarily for their benefit. We demand that the canal shall be so operated as to break transportation monopoly, now held and misused by the transcontinental railroads, by maintaining sea competition with them; that ships directly or indirectly owned or controlled by American railroad corporations shall not be permitted to use the canal, and that American ships engaged in the coasting trade shall pay no tolls.

The Republican platform did not declare a policy but President Taft's views given in his memorandum cover his policy if elected.

TREATY OF 1846

BETWEEN THE UNITED STATES AND THE REPUBLIC OF NEW GRANADA

This is a treaty of thirty-six articles.

ARTICLE XXXV

The United States of America and the Republic of New Granada desiring to make as durable as possible, the relations which are to be established between the two parties by

virtue of this treaty, have declared solemnly and do agree to the following points.

1st. For the better understanding of the preceding articles, it is, and has been stipulated, between the high contracting parties, that the citizens, vessels and merchandise of the United States shall enjoy in the parts of New Granada, including those of the part of the Granadian territory generally denominated Isthmus of Panama . . . all the exemptions, privileges and immunities, which are now or which may hereafter be enjoyed by Granadian citizens, their vessels and merchandise; and that this equality of favors shall be made to extend to the passengers, correspondence and merchandise of the United States in their transit across the said territory, from one sea to the other.

The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed shall be open and free to the Government and citizens of the United States and for the transportation of any articles of produce, manufactures or merchandise, of lawful commerce belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandise thus passing over any road or canal that may be made by the Government of New Granada, or by the authority of the same, than is under like circumstances, levied upon and collected from the Granadian citizens; that any lawful produce, manufactures or merchandise belonging to citizens of the United States, thus passing from one sea to the other, in either direction for the purpose of exportation to any foreign country, shall not be liable to any import duties whatever; or having paid said duties they shall be entitled to draw back, upon their exportation; nor shall the citizens of the United States be liable to any duty, tolls, or charges of any kind to which native citizens are not subjected for thus passing the said Isthmus.

And in order to secure to themselves the tranquil and constant enjoyment of these advantages and for the favors they have acquired by the 4th, 5th and 6th articles of this treaty, the United States guarantees positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the beforementioned Isthmus with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists and in consequence the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over said territory. . . .

Articles 4, 5 and 6 provide for relief from discriminating duties on tonnage or cargo—which had nearly destroyed U. S. trade with New Granada.

PRESIDENT WILSON'S MESSAGE

Gentlemen of the Congress—"I have come to you upon an errand which can be very briefly performed, but I beg that you will not measure its importance by the number of sentences in which I state it. No communication I have expressed to the Congress carried with it graver or more far-reaching implications to the interests of the country, and I come now to speak upon a matter with regard to which I am charged in a peculiar degree, by the Constitution itself, with personal responsibility.

I have come to ask for the repeal of that provision of the Panama Canal Act of August 24, 1912, which exempts vessels of the coastwise trade of the United States from the payment of tolls, and to urge upon you the justice, the wisdom and the large policy of such a repeal with the utmost earnestness of which I am capable.

In my judgment very fully considered and maturely formed, that exemption constitutes a mistaken economic policy from every point of view, and is moreover, in plain contravention of the treaty with Great Britain concerning the Canal, con-

cluded on November 18, 1901. But I have not come to urge my personal views. I have come to state to you a fact and a situation. Whatever may be our own differences of opinion concerning this much debated measure, its meaning is not debated out of the United States. Everywhere else the language of the treaty is given but one interpretation, and that interpretation precludes the exemption I am asking you to repeal. We consented to the treaty; its language we accepted, if we did not originate it; and we are too big, too powerful, too self-respecting a nation to interpret with too strained or refined a reading the words of our own promises just because we have the power enough to give us leave to read them as we please.

The large thing to do is the only thing we can afford to do, a voluntary withdrawal from a position everywhere questioned and misunderstood. We ought to reverse our action without raising the question whether we are right or wrong, and so once more deserve our reputation for generosity and the redemption of every obligation without quibble or hesitation.

I ask you this in support of the foreign policy of the administration. I shall not know how to deal with other matters of even greater delicacy and nearer consequence, if you do not grant it to me in ungrudging measure."

PANAMA CANAL ACT, 1912

Section 5. That the President is hereby authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the United States for the use of the Panama Canal. . . . No tolls shall be levied upon vessels engaged in the coastwise trade of the United States. That section forty-one hundred and thirty-two of the Revised Statutes is hereby amended to read as follows: Tolls may be based upon gross or net registered tonnage. . . . When based on net registered tonnage the tolls shall not ex-

ceed one dollar and twenty-five cents per net registered ton, nor be less, other than for vessels of the United States and its citizens, than the estimated proportionate cost of the actual maintenance and operation of the canal.

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